



Amendment No. 1
to
Contract No. PA170000074
for
Arbitrage Compliance Services
between
Hilltop Securities Asset Management, LLC
and the
City of Austin

- 1.0 The City hereby exercises the extension option for the above-referenced contract. Effective September 12, 2020 to September 11, 2021. One option remains.
- 2.0 The total Contract amount is increased by \$29,900.00 for the extension option period. The total Contract authorization is recapped below:

Term	Action Amount	Total Contract Amount
Basic Term: 09/12/2017 – 09/11/2020	\$89,700.00	\$89,700.00
Amendment No. 1: Option 1 09/12/2020 – 09/11/2021	\$29,900.00	\$119,600.00

- 3.0 By signing this Amendment, the Contractor certifies that the Contractor and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration (GSA) List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.
- 4.0 All other terms and conditions remain the same.

BY THE SIGNATURES affixed below, this Amendment is hereby incorporated into and made a part of the above-referenced contract.

Signature & Date:

9/10/2020

Printed Name:
Authorized Representative

J. Colby Jackson

Signature & Date:

Cindy Reyes

Digitally signed by Cindy
Reyes
Date: 2020.09.10
13:13:39 -05'00'

Cindy Reyes, Contract Management Specialist III
City of Austin
Purchasing Office

Hilltop Securities Asset Management, LLC
1201 Elm Street Suite 3500
Dallas, TX 75270
214-953-8760



City of Austin

Purchasing Office

P.O. Box 1088, Austin, TX 78767

September 12, 2017

First Southwest Asset Management, LLC
J. Colby Jackson
Director
1201 Elm Street, Suite 3500
Dallas, TX 75270
colby.jackson@hilltopsecurities.com

Dear Mr. Jackson:

The City approved the execution of a contract with your company for Arbitrage Compliance Services in accordance with the referenced solicitation.

Responsible Department:	FSD
Department Contact Person:	Bryan Rivera
Department Contact Email Address:	Bryan.Rivera@austintexas.gov
Department Contact Telephone:	512-974-7891
Project Name:	Arbitrage Compliance Services
Contractor Name:	First Southwest Asset Management, LLC
Contract Number:	MA 7400 PA170000074
Contract Period:	09/12/2017-09/11/2020 for initial term
Dollar Amount	\$89,700.00 for initial term
Extension Options:	Two 12-month extension options
Requisition Number:	RQM 7400 17050900507
Solicitation Type & Number:	RFP 7400 EAL0300
Agenda Item Number:	N/A
Council Approval Date:	N/A

Thank you for your interest in doing business with the City of Austin. If you have any questions regarding this contract, please contact the person referenced under Department Contact Person.

Sincerely,

Liz Lock
Procurement Specialist II
City of Austin
Purchasing Office

cc: Bryan Rivera, Financial Services Department - Treasury
Sandy Brandt, Procurement Specialist IV

**CONTRACT BETWEEN THE CITY OF AUSTIN (“City”)
AND
First Southwest Asset Management, LLC (“Contractor”)
for
Arbitrage Compliance Services
MA 7400 PA170000074**

The City accepts the Contractor’s Offer (as referenced in Section 1.1.3 below) for the above requirement and enters into the following Contract.

This Contract is between First Southwest Asset Management, LLC having offices at 1201 Elm Street, Suite 3500, Dallas, TX 75270 and the City, a home-rule municipality incorporated by the State of Texas, and is effective as of the date executed by the City (“Effective Date”).

Capitalized terms used but not defined herein have the meanings given them in Solicitation Number RFP 7400 EAL0300.

1.1 This Contract is composed of the following documents:

- 1.1.1 This document
- 1.1.2 The City’s Solicitation, RFP 7400EAL0300 including all documents incorporated by reference
- 1.1.3 First Southwest Asset Management, LLC’s Offer, dated July 28, 2017, including subsequent clarifications

1.2 Order of Precedence. Any inconsistency or conflict in the Contract documents shall be resolved by giving precedence in the following order:

- 1.2.1 This document
- 1.2.2 The City’s Solicitation as referenced in Section 1.1.2, including all documents incorporated by reference
- 1.2.3 The Contractor’s Offer as referenced in Section 1.1.3, including subsequent clarifications.

1.3 Term of Contract. The Contract will be in effect for an initial term of 36 months and may be extended thereafter for up to two 12-month extension options, subject to the approval of the Contractor and the City Purchasing Officer or his designee. See the Term of Contract provision in Section 0400 for additional Contract requirements.

1.4 Compensation. The Contractor shall be paid a total Not-to-Exceed amount of \$89,700 for the initial Contract term and \$29,900 for each extension option as indicated in the Cost Proposal, Section 0600. Payment shall be made upon successful completion of services or delivery of goods as outlined in each individual Delivery Order.

1.5 Quantity of Work. There is no guaranteed quantity of work for the period of the Contract and there are no minimum order quantities. Work will be on an as needed basis as specified by the City for each Delivery Order

1.6 Clarifications and Additional Agreements. The following are incorporated into the Contract.

- 1.6.1 Maximum annual fee of \$29,900 for all issues outstanding as of September 30, 2017.
Any new issuance will be billed at \$1,125 per bond year.

This Contract (including any Exhibits) constitutes the entire agreement of the parties regarding the subject matter of this Contract and supersedes all prior and contemporaneous agreements and understandings, whether written or oral, relating to such subject matter. This Contract may be altered, amended, or modified only by a written instrument signed by the duly authorized representatives of both parties.

In witness whereof, the City has caused a duly authorized representative to execute this Contract on the date set forth below.

**First Southwest Asset Management,
LLC**

CITY OF AUSTIN

David K. Medanich

Printed Name of Authorized Person

Signature

President

Title:

September 6, 2017

Date:

Liz Lock

Printed Name of Authorized Person

Signature

Procurement Specialist II

Title:

Date:



CITY OF AUSTIN, TEXAS
Purchasing Office
REQUEST FOR PROPOSAL (RFP)
OFFER SHEET

SOLICITATION NO: RFP 7400 EAL0300

DATE ISSUED: July 10, 2017

REQUISITION NO.: RQM 7400 17050900507

COMMODITY CODE: 94648

**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT THE FOLLOWING
AUTHORIZED CONTACT PERSON:**

Liz Lock

Procurement Specialist II

Phone: (512) 974-2034

E-Mail: Liz.Lock@austintexas.gov

Sandy Brandt

Procurement Specialist IV

Phone: (512) 974-1783

E-Mail: Sandy.Brandt@austintexas.gov

COMMODITY/SERVICE DESCRIPTION: Arbitrage Compliance
Services

PRE-PROPOSAL CONFERENCE TIME AND DATE: July 13, 2017,
8:30am CST

LOCATION: 124 W. 8th Street, Suite 310, Austin, TX 78701

Call in by dialing (512) 974-9300, participant code 464410

PROPOSAL DUE PRIOR TO: August 1, 2017, 2:00pm CST

PROPOSAL OPENING TIME AND DATE: August 1, 2017, 3:00pm
CST

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 308, AUSTIN, TEXAS 78701

**LIVE SOLICITATION OPENING ONLINE: For RFP's, only the
names of respondents will be read aloud**

For information on how to attend the Solicitation Closing online, please
select this link:

<http://www.austintexas.gov/department/bid-opening-webinars>

**When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as
shown below:**

Address for US Mail (Only)	Address for FedEx, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # RFP 7400 EAL0300	Purchasing Office-Response Enclosed for Solicitation # RFP 7400 EAL0300
P.O. Box 1088	124 W 8 th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

**NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the
responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the
time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving
on time. See Section 0200 for additional solicitation instructions.**

All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

**SUBMIT 1 ORIGINAL PAPER COPY AND 1 ELECTRONIC COPY IN PDF ON A FLASH DRIVE OF
YOUR RESPONSE**

*****SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT*****

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	4
0500	SCOPE OF WORK	1
0600	PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION FACTORS	4
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION–Complete and return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM – Complete & return	1
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable	3

*** Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the * Sections are available on the Internet at the following online address:**

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

INTERESTED PARTIES DISCLOSURE

In addition, Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 "Certificate of Interested Parties" that is signed and notarized for a contract award requiring council authorization. The "Certificate of Interested Parties" form must be completed on the Texas Ethics Commission website, printed, signed and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution.

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: First Southwest Asset Management, LLC

Company Address: 1201 Elm Street, Suite 3500

City, State, Zip: Dallas TX 75270

Federal Tax ID No. _____

Printed Name of Officer or Authorized Representative: J. Colby Jackson

Title: Director

Signature of Officer or Authorized Representative: 

Date: July 28, 2017

Email Address: colby.jackson@hilltopsecurities.com

Phone Number: 214.953.8760

* Proposal response must be submitted with this Offer sheet to be considered for award



**ADDENDUM
CITY OF AUSTIN, TEXAS**

Solicitation: RFP 7400 EAL0300

Addendum No: 1

Date of Addendum: 07/14//2017

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Questions:

Q1- How current are the reports?

A1- Through 09/30/2016

Q2- Are the monthly balances in Excel?

A2- Yes, the City will provide Excel spreadsheets.

Q3- Who is the current provider and what is their fee?

A3- The current provider is BLX and their fee is \$1250 per report.

Q4- How is interest allocation provided?

A4- The Investment Manager will provide the monthly interest rates via Excel.

Q5- Can you clarify commingled funds?

A5- All funds are commingled.

Q6- Is debt service fund bona fide?

A6- Yes

Q7- When new bond issue delivers, will it show up under series 2006?

A7- Appendix B, 2007 Tab, would show no expenditures. Should a particular project be funded by multiple issuances, the proceeds will be spent on a First in First out allocation.

Q8- Can you clarify debt service funds?

A8- There are separate debt service funds for each of the City's Credits. For instance, the Public Improvement Bonds get paid out of the General Obligation Debt Service Fund, while the Austin Water Utility Bonds get paid out of the Austin Water Debt Service Fund.

Q9- Is there a reserve portion of debt service fund?

A9- Yes, the City of Austin has a Debt Service Reserve Fund for the Airport System Revenue Bonds, the Combined Utility System Revenue Bonds, Water and WasteWater Separate Lien Bonds.

Q10- Regarding commercial paper, is it just a spend reimbursement?

A10- Yes, reimbursement basis only.

II. Additional Information: The attendance log from the Pre-Proposal Conference held on July 13, 2017 is attached.

Revised 12/13/2015

III. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.


APPROVED BY: _____

Liz Lock, Procurement Specialist II
Purchasing Office, 512-974-2034

Date

2/14/17

ACKNOWLEDGED BY: **First Southwest Asset Management, LLC**

 _____
Name J. Colby Jackson, Director

Authorized Signature

July 28, 2017

Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.



**ADDENDUM
CITY OF AUSTIN, TEXAS**

Solicitation: RFP 7400 EAL0300

Addendum No: 2

Date of Addendum: 07/21//2017

This addendum is to incorporate the following changes to the above referenced solicitation:

I. Questions:

Q1- Can you clarify on Addendum No 1, Q6 "Is debt service fund bona fide"?

A1- The answer in Addendum No 1, A6 was "yes". To clarify the answer- Most debt service funds are bona fide, however, the debt service account for the Permanent Improvement Bonds has included a reserve portion.

Q2- Can you clarify on Addendum No 1, Q9 "Is there a reserve portion of debt service fund"?

A2- The answer in Addendum No 1, A9 was "no". To clarify the answer- Most debt service funds are bona fide, however, the debt service account for the Permanent Improvement Bonds has included a reserve portion. The City of Austin also has a Debt Service Reserve Fund for the Airport System.

II. ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY: _____

Liz Lock, Procurement Specialist II
Purchasing Office, 512-974-2034

7/21/17
Date

ACKNOWLEDGED BY: **First Southwest Asset Management, LLC**

Name J. Colby Jackson, Director

Authorized Signature

July 28, 2017

Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.



**ADDENDUM
CITY OF AUSTIN, TEXAS**

Solicitation: RFP 7400 EAL0300

Addendum No: 3

Date of Addendum: 07/25/2017

This addendum is to incorporate the following changes to the above referenced solicitation:


I. Question:

Q1- Does the City continue to maintain and budget for an excess or "reserve" portion of its Bond Interest and Sinking Fund related to Public Improvement Bonds and Combined GO Bonds (the "GO Debt Service Fund"). We understand that a portion of the GO Debt Service Fund is treated as a bona fide debt service fund and the remaining portion serves as a reserve that is subject to arbitrage rebate and is allocable to outstanding Public Improvement and Combined GO bond issues.

A1- Yes, the City budgets a 10% ending balance every year that is to be treated as a reserve in the GO Debt service fund.

ALL OTHER TERMS AND CONDITIONS REMAIN THE SAME.

APPROVED BY: _____


Sandy Brandt, Procurement Specialist IV
Purchasing Office, 512-974-1783

7/25/17
Date

ACKNOWLEDGED BY: **First Southwest Asset Management, LLC**

Name J. Colby Jackson, Director


Authorized Signature

July 28, 2017
Date

RETURN ONE COPY OF THIS ADDENDUM TO THE PURCHASING OFFICE, CITY OF AUSTIN, WITH YOUR RESPONSE OR PRIOR TO THE SOLICITATION CLOSING DATE. FAILURE TO DO SO MAY CONSTITUTE GROUNDS FOR REJECTION.

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a **smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required** under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm	First Southwest Asset Management, LLC	
Physical Address	300 West Sixth Street, Suite 1940, Austin TX 78701	
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm	N/A	
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm	N/A	
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

City of Austin, Texas
Section 0800
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas
Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does

not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, OR THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this 28th day of July, 2017

CONTRACTOR	First Southwest Asset Management, LLC
Authorized Signature	 J. Colby Jackson
Title	Director

Section 0835: Non-Resident Bidder Provisions

Company Name First Southwest Asset Management, LLC

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: First Southwest Asset Management, LLC is a Resident Bidder.

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: N/A Which State: _____

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: N/A

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form**

SOLICITATION NUMBER: **RFP 7400 EAL0300**
SOLICITATION TITLE: **Arbitrage Compliance Services**

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.

☒ **NO, I DO NOT intend to use Subcontractors/Sub-consultants.**

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

☐ **YES, I DO intend to use Subcontractors /Sub-consultants.**

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name	First Southwest Asset Management, LLC		
City Vendor ID Code			
Physical Address	1201 Elm Street, Suite 3500		
City, State Zip	Dallas TX 75270		
Phone Number	214.953.8760	Email Address	colby.jackson@hilltopsecurities.com
If the Offeror City of Austin M/WBE certified?	<input checked="" type="checkbox"/> NO <input type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		

Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed **Subcontracting/Sub-Consulting Utilization Form**, and if applicable my completed **Subcontracting/Sub-Consulting Utilization Plan**, shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the **Request For Change** form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form. I understand that, if a Subcontractor is not listed in my **Subcontracting/Sub-Consulting Utilization Plan**, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my **Request for Change** form.

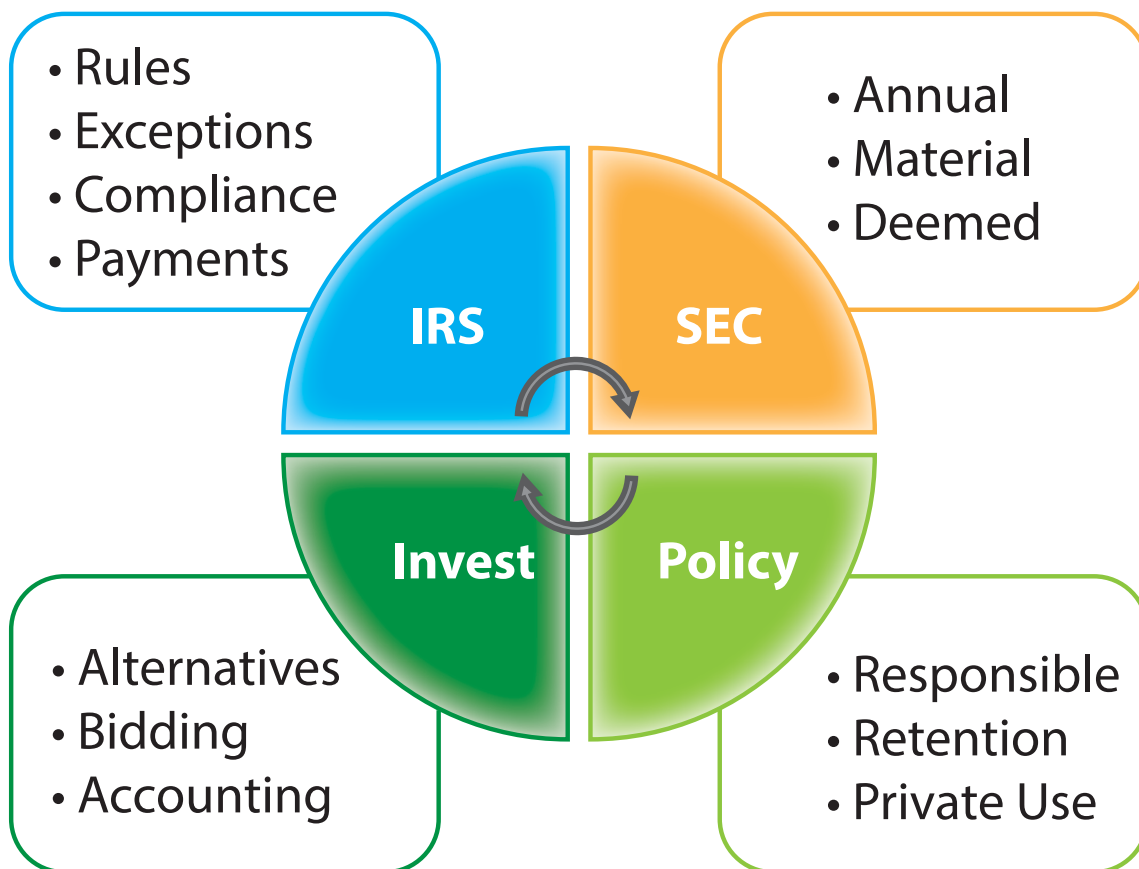
J. Colby Jackson, Director

Name and Title of Authorized Representative (Print or Type)


 Signature/Date

July 28, 2017

2017 Post Issuance Compliance Seminar



FIRSTSOUTHWEST ASSET MANAGEMENT
presents a comprehensive post issuance seminar
devoted to tax-exempt debt. Topics include Arbitrage
Rebate, IRS Updates, IRS Audits, SEC Continuing
Disclosure, Written Policies and Procedures,
Document Retention, Private Business Use, and
Investment Alternatives and Reporting.

Seminar Location

May 11-12, 2017
Hilton Palacio del Rio
San Antonio, Texas

DAY ONE	SESSION	OBJECTIVE
7:00 - 8:00 AM	Registration & Breakfast	
8:00 - 10:00 AM	Introduction Rebate from 65,000 Feet General Rebate Requirements Rebate - By the Book Expenditures Exceptions to Rebate	<p>This section provides participants with a high level background on the reasons behind the rebate rules, rebate terminology, funds subject to rebate, computation and payment dates, and IRS penalties for not filing on a timely basis.</p> <p>This section provides participants with an understanding of:</p> <ol style="list-style-type: none"> 1. When the IRS deems expenditures to be made and the allowable time periods that expenditures can be re-allocated. 2. Exceptions to the rebate rules that allow amounts to be excluded from calculations including Small Issuer, Tax-Exempt Investments, the 6, 18, and 24 Month Spending Exceptions, and the exceptions associated with Debt Service Funds.
10:00 - 10:15 AM	Break	
10:15 - Noon	Rebate - By the Book Reserve Funds Commingled Funds Working Capital Short Term Notes	<ol style="list-style-type: none"> 3. How to determine if a fund is commingled. Safe Harbor Expense and Income allocation methods. Allocation methods for commingled Reserve Funds based upon funding sources. When the Mark to Market valuation rules must be utilized. 4. Tax Treatment of Short Term Notes and Exceptions
Noon - 1:00 PM	Lunch	
1:30 - 2:15 PM	Rebate - By the Book Universal Cap Stimulus Act Bond Provisions IRS Current Events	<ol style="list-style-type: none"> 5. What if Your Investment Exceed your Par Outstanding? 6. When under the Stimulus Act, Taxable bonds are subject to the rebate rules, required rebate adjustments for Direct Pay bonds, and the special treatment of Qualified School Construction Bonds. <p>This section provides participants with an understanding of:</p> <ol style="list-style-type: none"> 1. Issue Price Regulations 2. Management Contracts 3. Tax Reform Update
2:15 - 3:00 PM	IRS Audits	<p>This section provides participants with an understanding of:</p> <ol style="list-style-type: none"> 1. What Happens during an Audit? 2. Critical Mistakes During the Audit Process 3. Revised IRS Audit Procedures
3:00 - 3:15 PM	Break	
3:15 - 5:00 PM	Anatomy of a Calculation Bond Documents Sources and Uses of Funds Bond Yields Cash Flows and Investments Calculation Assumptions	<p>This section provides participants with an understanding of:</p> <ol style="list-style-type: none"> 1. Rebate Calculation Steps and the Information Flow 2. Rules related to Calculating a Bond Yield 3. The various Closing Documents used in a Calculation and where to find the necessary information. 4. Determining what Funds need to be Included in the Calculation 5. Compiling a Sources and Uses of Funds 6. Compiling Investment Cash Flows 7. The Major Components of a Rebate Calculation 8. Understanding Calculation Assumptions

DAY TWO

SESSION

OBJECTIVE

7:00 - 8:00 AM	Breakfast	
8:00 - 9:00 AM	Refunding/Transferred Proceeds	This section provides participants with an understanding of: 1. The Different Types of Refudings 2. Life Cycle of a Refunding 3. Treatment of Mixed Escrows 4. Basics of Transferred Proceeds 5. Spending Exception Impact of Refundings
9:00 - 10:15 AM	Yield Restriction	This section provides participants with an understanding of: 1. A second set of required calculations and how the rules differ. 2. Temporary Periods 3. Treatment of Debt Service Funds 4. Treatment of Reserve Funds 5. Materially Higher Yield 6. The Yield Restriction impact of Advance Refundings 7. Which Liability - Rebate or Yield Restriction?
10:15 - 10:30 AM	Break	
10:30 - 11:30 PM	Common Post Issuance Mistakes	This section provides participants with an understanding of: 1. Record Retention 2. Spending Proceeds 3. Tracking Bond Financed Assets 4. Private Business Use
11:30 - Noon	Continuing Disclosure	This section provides participants with an understanding of: 1. SEC Rule 15c2-12 2. Disclosure Reporting Requirements 3. Developments in Municipal Disclosure
Noon - 1:00 PM	Lunch	
1:00 - 3:00 PM	Effective Investment of Bond Proceeds	This section provides participants with an understanding of: 1. Historical Perspective 2. The Economy and Interest Rate Forecast 3. Available Funds 4. Investment Alternatives
	Bidding Rules	1. Three Bid Rule for GICs and Yield Restricted Escrows 2. Bona Fide Solicitation Requirements 3. Winning Bid Requirements 4. Record-Keeping Requirements
	Accounting Requirements	1. Financial Statement Presentation 2. Valuation of Investments 3. FASB and GASB Requirements
3:00 - 3:15 PM	Break	
3:15 - 4:30 PM	Comprehensive Rebate Case Study	This section tests the participants' rebate knowledge by assembling a rebate calculation based upon bond documents, a participant generated Sources and Uses of Funds, and selecting a bond yield and rebatable cash flows from multiple sources.

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By submitting an Offer in response to the Solicitation, the Contractor agrees that the Contract shall be governed by the following terms and conditions. Unless otherwise specified in the Contract, Sections 3, 4, 5, 6, 7, 8, 20, 21, and 36 shall apply only to a Solicitation to purchase Goods, and Sections 9, 10, 11 and 22 shall apply only to a Solicitation to purchase Services to be performed principally at the City's premises or on public rights-of-way.

1. **CONTRACTOR'S OBLIGATIONS**. The Contractor shall fully and timely provide all Deliverables described in the Solicitation and in the Contractor's Offer in strict accordance with the terms, covenants, and conditions of the Contract and all applicable Federal, State, and local laws, rules, and regulations.
2. **EFFECTIVE DATE/TERM**. Unless otherwise specified in the Solicitation, this Contract shall be effective as of the date the contract is signed by the City, and shall continue in effect until all obligations are performed in accordance with the Contract.
3. **CONTRACTOR TO PACKAGE DELIVERABLES**: The Contractor will package Deliverables in accordance with good commercial practice and shall include a packing list showing the description of each item, the quantity and unit price. Unless otherwise provided in the Specifications or Supplemental Terms and Conditions, each shipping container shall be clearly and permanently marked as follows: (a) The Contractor's name and address, (b) the City's name, address and purchase order or purchase release number and the price agreement number if applicable, (c) Container number and total number of containers, e.g. box 1 of 4 boxes, and (d) the number of the container bearing the packing list. The Contractor shall bear cost of packaging. Deliverables shall be suitably packed to secure lowest transportation costs and to conform with requirements of common carriers and any applicable specifications. The City's count or weight shall be final and conclusive on shipments not accompanied by packing lists.
4. **SHIPMENT UNDER RESERVATION PROHIBITED**: The Contractor is not authorized to ship the Deliverables under reservation and no tender of a bill of lading will operate as a tender of Deliverables.
5. **TITLE & RISK OF LOSS**: Title to and risk of loss of the Deliverables shall pass to the City only when the City actually receives and accepts the Deliverables.
6. **DELIVERY TERMS AND TRANSPORTATION CHARGES**: Deliverables shall be shipped F.O.B. point of delivery unless otherwise specified in the Supplemental Terms and Conditions. Unless otherwise stated in the Offer, the Contractor's price shall be deemed to include all delivery and transportation charges. The City shall have the right to designate what method of transportation shall be used to ship the Deliverables. The place of delivery shall be that set forth in the block of the purchase order or purchase release entitled "Receiving Agency".
7. **RIGHT OF INSPECTION AND REJECTION**: The City expressly reserves all rights under law, including, but not limited to the Uniform Commercial Code, to inspect the Deliverables at delivery before accepting them, and to reject defective or non-conforming Deliverables. If the City has the right to inspect the Contractor's, or the Contractor's Subcontractor's, facilities, or the Deliverables at the Contractor's, or the Contractor's Subcontractor's, premises, the Contractor shall furnish, or cause to be furnished, without additional charge, all reasonable facilities and assistance to the City to facilitate such inspection.
8. **NO REPLACEMENT OF DEFECTIVE TENDER**: Every tender or delivery of Deliverables must fully comply with all provisions of the Contract as to time of delivery, quality, and quantity. Any non-complying tender shall constitute a breach and the Contractor shall not have the right to substitute a conforming tender; provided, where the time for performance has not yet expired, the Contractor may notify the City of the intention to cure and may then make a conforming tender within the time allotted in the contract.
9. **PLACE AND CONDITION OF WORK**: The City shall provide the Contractor access to the sites where the Contractor is to perform the services as required in order for the Contractor to perform the services in a timely and efficient manner, in accordance with and subject to the applicable security laws, rules, and regulations. The Contractor acknowledges that it has satisfied itself as to the nature of the City's service requirements and specifications, the location and essential characteristics of the work sites, the quality and quantity of materials, equipment, labor and facilities necessary to perform the services, and any other condition or state of fact which could in any way affect performance of the Contractor's obligations under the contract. The Contractor hereby releases and holds the City

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harmless from and against any liability or claim for damages of any kind or nature if the actual site or service conditions differ from expected conditions.

10. WORKFORCE

- A. The Contractor shall employ only orderly and competent workers, skilled in the performance of the services which they will perform under the Contract.
- B. The Contractor, its employees, subcontractors, and subcontractor's employees may not while engaged in participating or responding to a solicitation or while in the course and scope of delivering goods or services under a City of Austin contract or on the City's property .
 - i. use or possess a firearm, including a concealed handgun that is licensed under state law, except as required by the terms of the contract; or
 - ii. use or possess alcoholic or other intoxicating beverages, illegal drugs or controlled substances, nor may such workers be intoxicated, or under the influence of alcohol or drugs, on the job.
- C. If the City or the City's representative notifies the Contractor that any worker is incompetent, disorderly or disobedient, has knowingly or repeatedly violated safety regulations, has possessed any firearms, or has possessed or was under the influence of alcohol or drugs on the job, the Contractor shall immediately remove such worker from Contract services, and may not employ such worker again on Contract services without the City's prior written consent.

- 11. COMPLIANCE WITH HEALTH, SAFETY, AND ENVIRONMENTAL REGULATIONS:** The Contractor, its Subcontractors, and their respective employees, shall comply fully with all applicable federal, state, and local health, safety, and environmental laws, ordinances, rules and regulations in the performance of the services, including but not limited to those promulgated by the City and by the Occupational Safety and Health Administration (OSHA). In case of conflict, the most stringent safety requirement shall govern. The Contractor shall indemnify and hold the City harmless from and against all claims, demands, suits, actions, judgments, fines, penalties and liability of every kind arising from the breach of the Contractor's obligations under this paragraph.

12. INVOICES:

- A. The Contractor shall submit separate invoices in duplicate on each purchase order or purchase release after each delivery. If partial shipments or deliveries are authorized by the City, a separate invoice must be sent for each shipment or delivery made.
- B. **Proper Invoices must include a unique invoice number, the purchase order or delivery order number and the master agreement number if applicable, the Department's Name, and the name of the point of contact for the Department.** Invoices shall be itemized and transportation charges, if any, shall be listed separately. A copy of the bill of lading and the freight waybill, when applicable, shall be attached to the invoice. The Contractor's name and, if applicable, the tax identification number on the invoice must exactly match the information in the Vendor's registration with the City. Unless otherwise instructed in writing, the City may rely on the remittance address specified on the Contractor's invoice.
- C. Invoices for labor shall include a copy of all time-sheets with trade labor rate and Deliverables order number clearly identified. Invoices shall also include a tabulation of work-hours at the appropriate rates and grouped by work order number. Time billed for labor shall be limited to hours actually worked at the work site.
- D. Unless otherwise expressly authorized in the Contract, the Contractor shall pass through all Subcontract and other authorized expenses at actual cost without markup.
- E. Federal excise taxes, State taxes, or City sales taxes must not be included in the invoiced amount. The City will furnish a tax exemption certificate upon request.

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13. PAYMENT:

- A. All proper invoices received by the City will be paid within thirty (30) calendar days of the City's receipt of the Deliverables or of the invoice, whichever is later.
- B. **If payment is not timely made, (per paragraph A), interest shall accrue on the unpaid balance at the lesser of the rate specified in Texas Government Code Section 2251.025 or the maximum lawful rate; except, if payment is not timely made for a reason for which the City may withhold payment hereunder, interest shall not accrue until ten (10) calendar days after the grounds for withholding payment have been resolved.**
- C. If partial shipments or deliveries are authorized by the City, the Contractor will be paid for the partial shipment or delivery, as stated above, provided that the invoice matches the shipment or delivery.
- D. The City may withhold or set off the entire payment or part of any payment otherwise due the Contractor to such extent as may be necessary on account of:
 - i. delivery of defective or non-conforming Deliverables by the Contractor;
 - ii. third party claims, which are not covered by the insurance which the Contractor is required to provide, are filed or reasonable evidence indicating probable filing of such claims;
 - iii. failure of the Contractor to pay Subcontractors, or for labor, materials or equipment;
 - iv. damage to the property of the City or the City's agents, employees or contractors, which is not covered by insurance required to be provided by the Contractor;
 - v. reasonable evidence that the Contractor's obligations will not be completed within the time specified in the Contract, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay;
 - vi. failure of the Contractor to submit proper invoices with all required attachments and supporting documentation; or
 - vii. failure of the Contractor to comply with any material provision of the Contract Documents.
- E. Notice is hereby given of Article VIII, Section 1 of the Austin City Charter which prohibits the payment of any money to any person, firm or corporation who is in arrears to the City for taxes, and of §2-8-3 of the Austin City Code concerning the right of the City to offset indebtedness owed the City.
- F. Payment will be made by check unless the parties mutually agree to payment by credit card or electronic transfer of funds. The Contractor agrees that there shall be no additional charges, surcharges, or penalties to the City for payments made by credit card or electronic funds transfer.
- G. The awarding or continuation of this contract is dependent upon the availability of funding. The City's payment obligations are payable only and solely from funds Appropriated and available for this contract. The absence of Appropriated or other lawfully available funds shall render the Contract null and void to the extent funds are not Appropriated or available and any Deliverables delivered but unpaid shall be returned to the Contractor. The City shall provide the Contractor written notice of the failure of the City to make an adequate Appropriation for any fiscal year to pay the amounts due under the Contract, or the reduction of any Appropriation to an amount insufficient to permit the City to pay its obligations under the Contract. In the event of non or inadequate appropriation of funds, there will be no penalty nor removal fees charged to the City.

- 14. TRAVEL EXPENSES:** All travel, lodging and per diem expenses in connection with the Contract for which reimbursement may be claimed by the Contractor under the terms of the Solicitation will be reviewed against the City's Travel Policy as published and maintained by the City's Controller's Office and the Current United States General Services Administration Domestic Per Diem Rates (the "Rates") as published and maintained on the Internet at:

<http://www.gsa.gov/portal/category/21287>

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No amounts in excess of the Travel Policy or Rates shall be paid. All invoices must be accompanied by copies of detailed itemized receipts (e.g. hotel bills, airline tickets). No reimbursement will be made for expenses not actually incurred. Airline fares in excess of coach or economy will not be reimbursed. Mileage charges may not exceed the amount permitted as a deduction in any year under the Internal Revenue Code or Regulations.

15. FINAL PAYMENT AND CLOSE-OUT:

- A. If an MBE/WBE Program Compliance Plan is required by the Solicitation, and the Contractor has identified Subcontractors, the Contractor is required to submit a Contract Close-Out MBE/WBE Compliance Report to the Project manager or Contract manager no later than the 15th calendar day after completion of all work under the contract. Final payment, retainage, or both may be withheld if the Contractor is not in compliance with the requirements of the Compliance Plan as accepted by the City.
- B. The making and acceptance of final payment will constitute:
 - i. a waiver of all claims by the City against the Contractor, except claims (1) which have been previously asserted in writing and not yet settled, (2) arising from defective work appearing after final inspection, (3) arising from failure of the Contractor to comply with the Contract or the terms of any warranty specified herein, (4) arising from the Contractor's continuing obligations under the Contract, including but not limited to indemnity and warranty obligations, or (5) arising under the City's right to audit; and
 - ii. a waiver of all claims by the Contractor against the City other than those previously asserted in writing and not yet settled.

16. SPECIAL TOOLS & TEST EQUIPMENT: If the price stated on the Offer includes the cost of any special tooling or special test equipment fabricated or required by the Contractor for the purpose of filling this order, such special tooling equipment and any process sheets related thereto shall become the property of the City and shall be identified by the Contractor as such.

17. AUDITS and RECORDS:

- A. The Contractor agrees that the representatives of the Office of the City Auditor or other authorized representatives of the City shall have access to, and the right to audit, examine, or reproduce, any and all records of the Contractor related to the performance under this Contract. The Contractor shall retain all such records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer. The Contractor agrees to refund to the City any overpayments disclosed by any such audit.
- B. Records Retention:
 - i. Contractor is subject to City Code chapter 2-11 (Records Management), and as it may subsequently be amended. For purposes of this subsection, a Record means all books, accounts, reports, files, and other data recorded or created by a Contractor in fulfillment of the Contract whether in digital or physical format, except a record specifically relating to the Contractor's internal administration.
 - ii. All Records are the property of the City. The Contractor may not dispose of or destroy a Record without City authorization and shall deliver the Records, in all requested formats and media, along with all finding aids and metadata, to the City at no cost when requested by the City
 - iii. The Contractor shall retain all Records for a period of three (3) years after final payment on this Contract or until all audit and litigation matters that the City has brought to the attention of the Contractor are resolved, whichever is longer.
- C. The Contractor shall include sections A and B above in all subcontractor agreements entered into in connection with this Contract.

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18. SUBCONTRACTORS:

- A. If the Contractor identified Subcontractors in an MBE/WBE Program Compliance Plan or a No Goals Utilization Plan the Contractor shall comply with the provisions of Chapters 2-9A, 2-9B, 2-9C, and 2-9D, as applicable, of the Austin City Code and the terms of the Compliance Plan or Utilization Plan as approved by the City (the "Plan"). The Contractor shall not initially employ any Subcontractor except as provided in the Contractor's Plan. The Contractor shall not substitute any Subcontractor identified in the Plan, unless the substitute has been accepted by the City in writing in accordance with the provisions of Chapters 2-9A, 2-9B, 2-9C and 2-9D, as applicable. No acceptance by the City of any Subcontractor shall constitute a waiver of any rights or remedies of the City with respect to defective Deliverables provided by a Subcontractor. If a Plan has been approved, the Contractor is additionally required to submit a monthly Subcontract Awards and Expenditures Report to the Contract Manager and the Purchasing Office Contract Compliance Manager no later than the tenth calendar day of each month.
- B. Work performed for the Contractor by a Subcontractor shall be pursuant to a written contract between the Contractor and Subcontractor. The terms of the subcontract may not conflict with the terms of the Contract, and shall contain provisions that:
 - i. require that all Deliverables to be provided by the Subcontractor be provided in strict accordance with the provisions, specifications and terms of the Contract;
 - ii. prohibit the Subcontractor from further subcontracting any portion of the Contract without the prior written consent of the City and the Contractor. The City may require, as a condition to such further subcontracting, that the Subcontractor post a payment bond in form, substance and amount acceptable to the City;
 - iii. require Subcontractors to submit all invoices and applications for payments, including any claims for additional payments, damages or otherwise, to the Contractor in sufficient time to enable the Contractor to include same with its invoice or application for payment to the City in accordance with the terms of the Contract;
 - iv. require that all Subcontractors obtain and maintain, throughout the term of their contract, insurance in the type and amounts specified for the Contractor, with the City being a named insured as its interest shall appear; and
 - v. require that the Subcontractor indemnify and hold the City harmless to the same extent as the Contractor is required to indemnify the City.
- C. The Contractor shall be fully responsible to the City for all acts and omissions of the Subcontractors just as the Contractor is responsible for the Contractor's own acts and omissions. Nothing in the Contract shall create for the benefit of any such Subcontractor any contractual relationship between the City and any such Subcontractor, nor shall it create any obligation on the part of the City to pay or to see to the payment of any moneys due any such Subcontractor except as may otherwise be required by law.
- D. The Contractor shall pay each Subcontractor its appropriate share of payments made to the Contractor not later than ten (10) calendar days after receipt of payment from the City.

19. WARRANTY-PRICE:

- A. The Contractor warrants the prices quoted in the Offer are no higher than the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.
- B. The Contractor certifies that the prices in the Offer have been arrived at independently without consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such fees with any other firm or with any competitor.
- C. In addition to any other remedy available, the City may deduct from any amounts owed to the Contractor, or otherwise recover, any amounts paid for items in excess of the Contractor's current prices on orders by others for like Deliverables under similar terms of purchase.

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20. **WARRANTY – TITLE:** The Contractor warrants that it has good and indefeasible title to all Deliverables furnished under the Contract, and that the Deliverables are free and clear of all liens, claims, security interests and encumbrances. The Contractor shall indemnify and hold the City harmless from and against all adverse title claims to the Deliverables.
21. **WARRANTY – DELIVERABLES:** The Contractor warrants and represents that all Deliverables sold the City under the Contract shall be free from defects in design, workmanship or manufacture, and conform in all material respects to the specifications, drawings, and descriptions in the Solicitation, to any samples furnished by the Contractor, to the terms, covenants and conditions of the Contract, and to all applicable State, Federal or local laws, rules, and regulations, and industry codes and standards. Unless otherwise stated in the Solicitation, the Deliverables shall be new or recycled merchandise, and not used or reconditioned.
- A. Recycled Deliverables shall be clearly identified as such.
 - B. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law; and any attempt to do so shall be without force or effect.
 - C. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the date of acceptance of the Deliverables or from the date of acceptance of any replacement Deliverables. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand either repair the non-conforming Deliverables, or replace the non-conforming Deliverables with fully conforming Deliverables, at the City's option and at no additional cost to the City. All costs incidental to such repair or replacement, including but not limited to, any packaging and shipping costs, shall be borne exclusively by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach of warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - D. If the Contractor is unable or unwilling to repair or replace defective or non-conforming Deliverables as required by the City, then in addition to any other available remedy, the City may reduce the quantity of Deliverables it may be required to purchase under the Contract from the Contractor, and purchase conforming Deliverables from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such Deliverables from another source.
 - E. If the Contractor is not the manufacturer, and the Deliverables are covered by a separate manufacturer's warranty, the Contractor shall transfer and assign such manufacturer's warranty to the City. If for any reason the manufacturer's warranty cannot be fully transferred to the City, the Contractor shall assist and cooperate with the City to the fullest extent to enforce such manufacturer's warranty for the benefit of the City.
22. **WARRANTY – SERVICES:** The Contractor warrants and represents that all services to be provided the City under the Contract will be fully and timely performed in a good and workmanlike manner in accordance with generally accepted industry standards and practices, the terms, conditions, and covenants of the Contract, and all applicable Federal, State and local laws, rules or regulations.
- A. The Contractor may not limit, exclude or disclaim the foregoing warranty or any warranty implied by law, and any attempt to do so shall be without force or effect.
 - B. Unless otherwise specified in the Contract, the warranty period shall be at least one year from the Acceptance Date. If during the warranty period, one or more of the above warranties are breached, the Contractor shall promptly upon receipt of demand perform the services again in accordance with above standard at no additional cost to the City. All costs incidental to such additional performance shall be borne by the Contractor. The City shall endeavor to give the Contractor written notice of the breach of warranty within thirty (30) calendar days of discovery of the breach warranty, but failure to give timely notice shall not impair the City's rights under this section.
 - C. If the Contractor is unable or unwilling to perform its services in accordance with the above standard as required by the City, then in addition to any other available remedy, the City may reduce the amount of services it may be

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required to purchase under the Contract from the Contractor, and purchase conforming services from other sources. In such event, the Contractor shall pay to the City upon demand the increased cost, if any, incurred by the City to procure such services from another source.

23. **ACCEPTANCE OF INCOMPLETE OR NON-CONFORMING DELIVERABLES:** If, instead of requiring immediate correction or removal and replacement of defective or non-conforming Deliverables, the City prefers to accept it, the City may do so. The Contractor shall pay all claims, costs, losses and damages attributable to the City's evaluation of and determination to accept such defective or non-conforming Deliverables. If any such acceptance occurs prior to final payment, the City may deduct such amounts as are necessary to compensate the City for the diminished value of the defective or non-conforming Deliverables. If the acceptance occurs after final payment, such amount will be refunded to the City by the Contractor.
24. **RIGHT TO ASSURANCE:** Whenever one party to the Contract in good faith has reason to question the other party's intent to perform, demand may be made to the other party for written assurance of the intent to perform. In the event that no assurance is given within the time specified after demand is made, the demanding party may treat this failure as an anticipatory repudiation of the Contract.
25. **STOP WORK NOTICE:** The City may issue an immediate Stop Work Notice in the event the Contractor is observed performing in a manner that is in violation of Federal, State, or local guidelines, or in a manner that is determined by the City to be unsafe to either life or property. Upon notification, the Contractor will cease all work until notified by the City that the violation or unsafe condition has been corrected. The Contractor shall be liable for all costs incurred by the City as a result of the issuance of such Stop Work Notice.
26. **DEFAULT:** The Contractor shall be in default under the Contract if the Contractor (a) fails to fully, timely and faithfully perform any of its material obligations under the Contract, (b) fails to provide adequate assurance of performance under Paragraph 24, (c) becomes insolvent or seeks relief under the bankruptcy laws of the United States or (d) makes a material misrepresentation in Contractor's Offer, or in any report or deliverable required to be submitted by the Contractor to the City.
27. **TERMINATION FOR CAUSE:** In the event of a default by the Contractor, the City shall have the right to terminate the Contract for cause, by written notice effective ten (10) calendar days, unless otherwise specified, after the date of such notice, unless the Contractor, within such ten (10) day period, cures such default, or provides evidence sufficient to prove to the City's reasonable satisfaction that such default does not, in fact, exist. The City may place Contractor on probation for a specified period of time within which the Contractor must correct any non-compliance issues. Probation shall not normally be for a period of more than nine (9) months, however, it may be for a longer period, not to exceed one (1) year depending on the circumstances. If the City determines the Contractor has failed to perform satisfactorily during the probation period, the City may proceed with suspension. In the event of a default by the Contractor, the City may suspend or debar the Contractor in accordance with the "City of Austin Purchasing Office Probation, Suspension and Debarment Rules for Vendors" and remove the Contractor from the City's vendor list for up to five (5) years and any Offer submitted by the Contractor may be disqualified for up to five (5) years. In addition to any other remedy available under law or in equity, the City shall be entitled to recover all actual damages, costs, losses and expenses, incurred by the City as a result of the Contractor's default, including, without limitation, cost of cover, reasonable attorneys' fees, court costs, and prejudgment and post-judgment interest at the maximum lawful rate. All rights and remedies under the Contract are cumulative and are not exclusive of any other right or remedy provided by law.
28. **TERMINATION WITHOUT CAUSE:** The City shall have the right to terminate the Contract, in whole or in part, without cause any time upon thirty (30) calendar days' prior written notice. Upon receipt of a notice of termination, the Contractor shall promptly cease all further work pursuant to the Contract, with such exceptions, if any, specified in the notice of termination. The City shall pay the Contractor, to the extent of funds Appropriated or otherwise legally available for such purposes, for all goods delivered and services performed and obligations incurred prior to the date of termination in accordance with the terms hereof.
29. **FRAUD:** Fraudulent statements by the Contractor on any Offer or in any report or deliverable required to be submitted by the Contractor to the City shall be grounds for the termination of the Contract for cause by the City and may result in legal action.

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30. DELAYS:

- A. The City may delay scheduled delivery or other due dates by written notice to the Contractor if the City deems it is in its best interest. If such delay causes an increase in the cost of the work under the Contract, the City and the Contractor shall negotiate an equitable adjustment for costs incurred by the Contractor in the Contract price and execute an amendment to the Contract. The Contractor must assert its right to an adjustment within thirty (30) calendar days from the date of receipt of the notice of delay. Failure to agree on any adjusted price shall be handled under the Dispute Resolution process specified in paragraph 48. However, nothing in this provision shall excuse the Contractor from delaying the delivery as notified.
- B. Neither party shall be liable for any default or delay in the performance of its obligations under this Contract if, while and to the extent such default or delay is caused by acts of God, fire, riots, civil commotion, labor disruptions, sabotage, sovereign conduct, or any other cause beyond the reasonable control of such Party. In the event of default or delay in contract performance due to any of the foregoing causes, then the time for completion of the services will be extended; provided, however, in such an event, a conference will be held within three (3) business days to establish a mutually agreeable period of time reasonably necessary to overcome the effect of such failure to perform.

31. INDEMNITY:

- A. Definitions:
 - i. "Indemnified Claims" shall include any and all claims, demands, suits, causes of action, judgments and liability of every character, type or description, including all reasonable costs and expenses of litigation, mediation or other alternate dispute resolution mechanism, including attorney and other professional fees for:
 - (1) damage to or loss of the property of any person (including, but not limited to the City, the Contractor, their respective agents, officers, employees and subcontractors; the officers, agents, and employees of such subcontractors; and third parties); and/or
 - (2) death, bodily injury, illness, disease, worker's compensation, loss of services, or loss of income or wages to any person (including but not limited to the agents, officers and employees of the City, the Contractor, the Contractor's subcontractors, and third parties),
 - ii. "Fault" shall include the sale of defective or non-conforming Deliverables, negligence, willful misconduct, or a breach of any legally imposed strict liability standard.
- B. **THE CONTRACTOR SHALL DEFEND (AT THE OPTION OF THE CITY), INDEMNIFY, AND HOLD THE CITY, ITS SUCCESSORS, ASSIGNS, OFFICERS, EMPLOYEES AND ELECTED OFFICIALS HARMLESS FROM AND AGAINST ALL INDEMNIFIED CLAIMS DIRECTLY ARISING OUT OF, INCIDENT TO, CONCERNING OR RESULTING FROM THE FAULT OF THE CONTRACTOR, OR THE CONTRACTOR'S AGENTS, EMPLOYEES OR SUBCONTRACTORS, IN THE PERFORMANCE OF THE CONTRACTOR'S OBLIGATIONS UNDER THE CONTRACT. NOTHING HEREIN SHALL BE DEEMED TO LIMIT THE RIGHTS OF THE CITY OR THE CONTRACTOR (INCLUDING, BUT NOT LIMITED TO, THE RIGHT TO SEEK CONTRIBUTION) AGAINST ANY THIRD PARTY WHO MAY BE LIABLE FOR AN INDEMNIFIED CLAIM.**

32. INSURANCE: (reference Section 0400 for specific coverage requirements). The following insurance requirement applies. (Revised March 2013).

- A. General Requirements.
 - i. The Contractor shall at a minimum carry insurance in the types and amounts indicated in Section 0400, Supplemental Purchase Provisions, for the duration of the Contract, including extension options and hold over periods, and during any warranty period.
 - ii. The Contractor shall provide Certificates of Insurance with the coverages and endorsements required in Section 0400, Supplemental Purchase Provisions, to the City as verification of coverage prior to contract execution and within fourteen (14) calendar days after written request from the

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City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or hold over period is exercised, as verification of continuing coverage.

- iii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iv. The City may request that the Contractor submit certificates of insurance to the City for all subcontractors prior to the subcontractors commencing work on the project.
- v. The Contractor's and all subcontractors' insurance coverage shall be written by companies licensed to do business in the State of Texas at the time the policies are issued and shall be written by companies with A.M. Best ratings of B+VII or better.
- vi. The "other" insurance clause shall not apply to the City where the City is an additional insured shown on any policy. It is intended that policies required in the Contract, covering both the City and the Contractor, shall be considered primary coverage as applicable.
- vii. If insurance policies are not written for amounts specified in Section 0400, Supplemental Purchase Provisions, the Contractor shall carry Umbrella or Excess Liability Insurance for any differences in amounts specified. If Excess Liability Insurance is provided, it shall follow the form of the primary coverage.
- viii. The City shall be entitled, upon request, at an agreed upon location, and without expense, to review certified copies of policies and endorsements thereto and may make any reasonable requests for deletion or revision or modification of particular policy terms, conditions, limitations, or exclusions except where policy provisions are established by law or regulations binding upon either of the parties hereto or the underwriter on any such policies.
- ix. The City reserves the right to review the insurance requirements set forth during the effective period of the Contract and to make reasonable adjustments to insurance coverage, limits, and exclusions when deemed necessary and prudent by the City based upon changes in statutory law, court decisions, the claims history of the industry or financial condition of the insurance company as well as the Contractor.
- x. The Contractor shall not cause any insurance to be canceled nor permit any insurance to lapse during the term of the Contract or as required in the Contract.
- xi. The Contractor shall be responsible for premiums, deductibles and self-insured retentions, if any, stated in policies. Self-insured retentions shall be disclosed on the Certificate of Insurance.
- xii. The Contractor shall provide the City thirty (30) calendar days' written notice of erosion of the aggregate limits below occurrence limits for all applicable coverages indicated within the Contract.
- xiii. The insurance coverages specified in Section 0400, Supplemental Purchase Provisions, are required minimums and are not intended to limit the responsibility or liability of the Contractor.

B. Specific Coverage Requirements: Specific insurance requirements are contained in Section 0400, Supplemental Purchase Provisions

33. **CLAIMS:** If any claim, demand, suit, or other action is asserted against the Contractor which arises under or concerns the Contract, or which could have a material adverse affect on the Contractor's ability to perform thereunder, the Contractor shall give written notice thereof to the City within ten (10) calendar days after receipt of notice by the

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Contractor. Such notice to the City shall state the date of notification of any such claim, demand, suit, or other action; the names and addresses of the claimant(s); the basis thereof; and the name of each person against whom such claim is being asserted. Such notice shall be delivered personally or by mail and shall be sent to the City and to the Austin City Attorney. Personal delivery to the City Attorney shall be to City Hall, 301 West 2nd Street, 4th Floor, Austin, Texas 78701, and mail delivery shall be to P.O. Box 1088, Austin, Texas 78767.

34. **NOTICES**: Unless otherwise specified, all notices, requests, or other communications required or appropriate to be given under the Contract shall be in writing and shall be deemed delivered three (3) business days after postmarked if sent by U.S. Postal Service Certified or Registered Mail, Return Receipt Requested. Notices delivered by other means shall be deemed delivered upon receipt by the addressee. Routine communications may be made by first class mail, telefax, or other commercially accepted means. Notices to the Contractor shall be sent to the address specified in the Contractor's Offer, or at such other address as a party may notify the other in writing. Notices to the City shall be addressed to the City at P.O. Box 1088, Austin, Texas 78767 and marked to the attention of the Contract Administrator.
35. **RIGHTS TO BID, PROPOSAL AND CONTRACTUAL MATERIAL**: All material submitted by the Contractor to the City shall become property of the City upon receipt. Any portions of such material claimed by the Contractor to be proprietary must be clearly marked as such. Determination of the public nature of the material is subject to the Texas Public Information Act, Chapter 552, Texas Government Code.
36. **NO WARRANTY BY CITY AGAINST INFRINGEMENTS**: The Contractor represents and warrants to the City that: (i) the Contractor shall provide the City good and indefeasible title to the Deliverables and (ii) the Deliverables supplied by the Contractor in accordance with the specifications in the Contract will not infringe, directly or contributorily, any patent, trademark, copyright, trade secret, or any other intellectual property right of any kind of any third party; that no claims have been made by any person or entity with respect to the ownership or operation of the Deliverables and the Contractor does not know of any valid basis for any such claims. The Contractor shall, at its sole expense, defend, indemnify, and hold the City harmless from and against all liability, damages, and costs (including court costs and reasonable fees of attorneys and other professionals) arising out of or resulting from: (i) any claim that the City's exercise anywhere in the world of the rights associated with the City's ownership, and if applicable, license rights, and its use of the Deliverables infringes the intellectual property rights of any third party; or (ii) the Contractor's breach of any of Contractor's representations or warranties stated in this Contract. In the event of any such claim, the City shall have the right to monitor such claim or at its option engage its own separate counsel to act as co-counsel on the City's behalf. Further, Contractor agrees that the City's specifications regarding the Deliverables shall in no way diminish Contractor's warranties or obligations under this paragraph and the City makes no warranty that the production, development, or delivery of such Deliverables will not impact such warranties of Contractor.
37. **CONFIDENTIALITY**: In order to provide the Deliverables to the City, Contractor may require access to certain of the City's and/or its licensors' confidential information (including inventions, employee information, trade secrets, confidential know-how, confidential business information, and other information which the City or its licensors consider confidential) (collectively, "Confidential Information"). Contractor acknowledges and agrees that the Confidential Information is the valuable property of the City and/or its licensors and any unauthorized use, disclosure, dissemination, or other release of the Confidential Information will substantially injure the City and/or its licensors. The Contractor (including its employees, subcontractors, agents, or representatives) agrees that it will maintain the Confidential Information in strict confidence and shall not disclose, disseminate, copy, divulge, recreate, or otherwise use the Confidential Information without the prior written consent of the City or in a manner not expressly permitted under this Agreement, unless the Confidential Information is required to be disclosed by law or an order of any court or other governmental authority with proper jurisdiction, provided the Contractor promptly notifies the City before disclosing such information so as to permit the City reasonable time to seek an appropriate protective order. The Contractor agrees to use protective measures no less stringent than the Contractor uses within its own business to protect its own most valuable information, which protective measures shall under all circumstances be at least reasonable measures to ensure the continued confidentiality of the Confidential Information.
38. **PUBLICATIONS**: All published material and written reports submitted under the Contract must be originally developed material unless otherwise specifically provided in the Contract. When material not originally developed is included in a report in any form, the source shall be identified.

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39. **ADVERTISING**: The Contractor shall not advertise or publish, without the City's prior consent, the fact that the City has entered into the Contract, except to the extent required by law.
40. **NO CONTINGENT FEES**: The Contractor warrants that no person or selling agency has been employed or retained to solicit or secure the Contract upon any agreement or understanding for commission, percentage, brokerage, or contingent fee, excepting bona fide employees of bona fide established commercial or selling agencies maintained by the Contractor for the purpose of securing business. For breach or violation of this warranty, the City shall have the right, in addition to any other remedy available, to cancel the Contract without liability and to deduct from any amounts owed to the Contractor, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.
41. **GRATUITIES**: The City may, by written notice to the Contractor, cancel the Contract without liability if it is determined by the City that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the City of Austin with a view toward securing the Contract or securing favorable treatment with respect to the awarding or amending or the making of any determinations with respect to the performing of such contract. In the event the Contract is canceled by the City pursuant to this provision, the City shall be entitled, in addition to any other rights and remedies, to recover or withhold the amount of the cost incurred by the Contractor in providing such gratuities.
42. **PROHIBITION AGAINST PERSONAL INTEREST IN CONTRACTS**: No officer, employee, independent consultant, or elected official of the City who is involved in the development, evaluation, or decision-making process of the performance of any solicitation shall have a financial interest, direct or indirect, in the Contract resulting from that solicitation. Any willful violation of this section shall constitute impropriety in office, and any officer or employee guilty thereof shall be subject to disciplinary action up to and including dismissal. Any violation of this provision, with the knowledge, expressed or implied, of the Contractor shall render the Contract voidable by the City.
43. **INDEPENDENT CONTRACTOR**: The Contract shall not be construed as creating an employer/employee relationship, a partnership, or a joint venture. The Contractor's services shall be those of an independent contractor. The Contractor agrees and understands that the Contract does not grant any rights or privileges established for employees of the City.
44. **ASSIGNMENT-DELEGATION**: The Contract shall be binding upon and enure to the benefit of the City and the Contractor and their respective successors and assigns, provided however, that no right or interest in the Contract shall be assigned and no obligation shall be delegated by the Contractor without the prior written consent of the City. Any attempted assignment or delegation by the Contractor shall be void unless made in conformity with this paragraph. The Contract is not intended to confer rights or benefits on any person, firm or entity not a party hereto; it being the intention of the parties that there be no third party beneficiaries to the Contract.
45. **WAIVER**: No claim or right arising out of a breach of the Contract can be discharged in whole or in part by a waiver or renunciation of the claim or right unless the waiver or renunciation is supported by consideration and is in writing signed by the aggrieved party. No waiver by either the Contractor or the City of any one or more events of default by the other party shall operate as, or be construed to be, a permanent waiver of any rights or obligations under the Contract, or an express or implied acceptance of any other existing or future default or defaults, whether of a similar or different character.
46. **MODIFICATIONS**: The Contract can be modified or amended only by a writing signed by both parties. No pre-printed or similar terms on any the Contractor invoice, order or other document shall have any force or effect to change the terms, covenants, and conditions of the Contract.
47. **INTERPRETATION**: The Contract is intended by the parties as a final, complete and exclusive statement of the terms of their agreement. No course of prior dealing between the parties or course of performance or usage of the trade shall be relevant to supplement or explain any term used in the Contract. Although the Contract may have been substantially drafted by one party, it is the intent of the parties that all provisions be construed in a manner to be fair to both parties, reading no provisions more strictly against one party or the other. Whenever a term defined by the Uniform Commercial Code, as enacted by the State of Texas, is used in the Contract, the UCC definition shall control, unless otherwise defined in the Contract.

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48. DISPUTE RESOLUTION:

- A. If a dispute arises out of or relates to the Contract, or the breach thereof, the parties agree to negotiate prior to prosecuting a suit for damages. However, this section does not prohibit the filing of a lawsuit to toll the running of a statute of limitations or to seek injunctive relief. Either party may make a written request for a meeting between representatives of each party within fourteen (14) calendar days after receipt of the request or such later period as agreed by the parties. Each party shall include, at a minimum, one (1) senior level individual with decision-making authority regarding the dispute. The purpose of this and any subsequent meeting is to attempt in good faith to negotiate a resolution of the dispute. If, within thirty (30) calendar days after such meeting, the parties have not succeeded in negotiating a resolution of the dispute, they will proceed directly to mediation as described below. Negotiation may be waived by a written agreement signed by both parties, in which event the parties may proceed directly to mediation as described below.
- B. If the efforts to resolve the dispute through negotiation fail, or the parties waive the negotiation process, the parties may select, within thirty (30) calendar days, a mediator trained in mediation skills to assist with resolution of the dispute. Should they choose this option, the City and the Contractor agree to act in good faith in the selection of the mediator and to give consideration to qualified individuals nominated to act as mediator. Nothing in the Contract prevents the parties from relying on the skills of a person who is trained in the subject matter of the dispute or a contract interpretation expert. If the parties fail to agree on a mediator within thirty (30) calendar days of initiation of the mediation process, the mediator shall be selected by the Travis County Dispute Resolution Center (DRC). The parties agree to participate in mediation in good faith for up to thirty (30) calendar days from the date of the first mediation session. The City and the Contractor will share the mediator's fees equally and the parties will bear their own costs of participation such as fees for any consultants or attorneys they may utilize to represent them or otherwise assist them in the mediation.

49. **JURISDICTION AND VENUE:** The Contract is made under and shall be governed by the laws of the State of Texas, including, when applicable, the Uniform Commercial Code as adopted in Texas, V.T.C.A., Bus. & Comm. Code, Chapter 1, excluding any rule or principle that would refer to and apply the substantive law of another state or jurisdiction. All issues arising from this Contract shall be resolved in the courts of Travis County, Texas and the parties agree to submit to the exclusive personal jurisdiction of such courts. The foregoing, however, shall not be construed or interpreted to limit or restrict the right or ability of the City to seek and secure injunctive relief from any competent authority as contemplated herein.

50. **INVALIDITY:** The invalidity, illegality, or unenforceability of any provision of the Contract shall in no way affect the validity or enforceability of any other portion or provision of the Contract. Any void provision shall be deemed severed from the Contract and the balance of the Contract shall be construed and enforced as if the Contract did not contain the particular portion or provision held to be void. The parties further agree to reform the Contract to replace any stricken provision with a valid provision that comes as close as possible to the intent of the stricken provision. The provisions of this section shall not prevent this entire Contract from being void should a provision which is the essence of the Contract be determined to be void.

51. **HOLIDAYS:** The following holidays are observed by the City:

<u>Holiday</u>	<u>Date Observed</u>
New Year's Day	January 1
Martin Luther King, Jr.'s Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11

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Thanksgiving Day	Fourth Thursday in November
Friday after Thanksgiving	Friday after Thanksgiving
Christmas Eve	December 24
Christmas Day	December 25

If a Legal Holiday falls on Saturday, it will be observed on the preceding Friday. If a Legal Holiday falls on Sunday, it will be observed on the following Monday.

52. **SURVIVABILITY OF OBLIGATIONS:** All provisions of the Contract that impose continuing obligations on the parties, including but not limited to the warranty, indemnity, and confidentiality obligations of the parties, shall survive the expiration or termination of the Contract.

53. **NON-SUSPENSION OR DEBARMENT CERTIFICATION:**

The City of Austin is prohibited from contracting with or making prime or sub-awards to parties that are suspended or debarred or whose principals are suspended or debarred from Federal, State, or City of Austin Contracts. By accepting a Contract with the City, the Vendor certifies that its firm and its principals are not currently suspended or debarred from doing business with the Federal Government, as indicated by the General Services Administration List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, or the City of Austin.

54. **EQUAL OPPORTUNITY**

A. **Equal Employment Opportunity:** No Contractor, or Contractor's agent, shall engage in any discriminatory employment practice as defined in Chapter 5-4 of the City Code. No Offer submitted to the City shall be considered, nor any Purchase Order issued, or any Contract awarded by the City unless the Offeror has executed and filed with the City Purchasing Office a current Non-Discrimination Certification. Non-compliance with Chapter 5-4 of the City Code may result in sanctions, including termination of the contract and the Contractor's suspension or debarment from participation on future City contracts until deemed compliant with Chapter 5-4.

B. **Americans with Disabilities Act (ADA) Compliance:** No Contractor, or Contractor's agent, shall engage in any discriminatory practice against individuals with disabilities as defined in the ADA, including but not limited to: employment, accessibility to goods and services, reasonable accommodations, and effective communications.

55. **INTERESTED PARTIES DISCLOSURE**

As a condition to entering the Contract, the Business Entity constituting the Offeror must provide the following disclosure of Interested Parties to the City prior to the award of a contract with the City on Form 1295 "Certificate of Interested Parties" as prescribed by the Texas Ethics Commission for any contract award requiring council authorization. The Certificate of Interested Parties Form must be completed on the Texas Ethics Commission website, printed, and signed by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury. The City will submit the "Certificate of Interested Parties" to the Texas Ethics Commission within 30 days of receipt from the successful Offeror. The Offeror is reminded that the provisions of Local Government Code 176, regarding conflicts of interest between the bidders and local officials remains in place. Link to Texas Ethics Commission Form 1295 process and procedures below:

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

56. **BUY AMERICAN ACT-SUPPLIES (Applicable to certain Federally funded requirements)**

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- A. Definitions. As used in this paragraph –
- i. "Component" means an article, material, or supply incorporated directly into an end product.
 - ii. "Cost of components" means -
 - (1) For components purchased by the Contractor, the acquisition cost, including transportation costs to the place of incorporation into the end product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
 - (2) For components manufactured by the Contractor, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (1) of this definition, plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the end product.
 - iii. "Domestic end product" means-
 - (1) An unmanufactured end product mined or produced in the United States; or
 - (2) An end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. Components of foreign origin of the same class or kind as those that the agency determines are not mined, produced, or manufactured in sufficient and reasonably available commercial quantities of a satisfactory quality are treated as domestic. Scrap generated, collected, and prepared for processing in the United States is considered domestic.
 - iv. "End product" means those articles, materials, and supplies to be acquired under the contract for public use.
 - v. "Foreign end product" means an end product other than a domestic end product.
 - vi. "United States" means the 50 States, the District of Columbia, and outlying areas.
- B. The Buy American Act (41 U.S.C. 10a - 10d) provides a preference for domestic end products for supplies acquired for use in the United States.
- C. The City does not maintain a list of foreign articles that will be treated as domestic for this Contract; but will consider for approval foreign articles as domestic for this product if the articles are on a list approved by another Governmental Agency. The Offeror shall submit documentation with their Offer demonstrating that the article is on an approved Governmental list.
- D. The Contractor shall deliver only domestic end products except to the extent that it specified delivery of foreign end products in the provision of the Solicitation entitled "Buy American Act Certificate".



CITY OF AUSTIN, TEXAS
Purchasing Office
REQUEST FOR PROPOSAL (RFP)
OFFER SHEET

SOLICITATION NO: RFP 7400 EAL0300

DATE ISSUED: July 10, 2017

REQUISITION NO.: RQM 7400 17050900507

COMMODITY CODE: 94648

**FOR CONTRACTUAL AND TECHNICAL
ISSUES CONTACT THE FOLLOWING
AUTHORIZED CONTACT PERSON:**

Liz Lock

Procurement Specialist II

Phone: (512) 974-2034

E-Mail: Liz.Lock@austintexas.gov

Sandy Brandt

Procurement Specialist IV

Phone: (512) 974-1783

E-Mail: Sandy.Brandt@austintexas.gov

COMMODITY/SERVICE DESCRIPTION: Arbitrage Compliance
Services

PRE-PROPOSAL CONFERENCE TIME AND DATE: July 13, 2017,
8:30am CST

LOCATION: 124 W. 8th Street, Suite 310, Austin, TX 78701

Call in by dialing (512) 974-9300, participant code 464410

PROPOSAL DUE PRIOR TO: August 1, 2017, 2:00pm CST

PROPOSAL OPENING TIME AND DATE: August 1, 2017, 3:00pm
CST

LOCATION: MUNICIPAL BUILDING, 124 W 8th STREET
RM 308, AUSTIN, TEXAS 78701

LIVE SOLICITATION OPENING ONLINE: For RFP's, only the
names of respondents will be read aloud

For information on how to attend the Solicitation Closing online, please
select this link:

<http://www.austintexas.gov/department/bid-opening-webinars>

**When submitting a sealed Offer and/or Compliance Plan, use the proper address for the type of service desired, as
shown below:**

Address for US Mail (Only)	Address for FedEx, UPS, Hand Delivery or Courier Service
City of Austin	City of Austin, Municipal Building
Purchasing Office-Response Enclosed for Solicitation # RFP 7400 EAL0300	Purchasing Office-Response Enclosed for Solicitation # RFP 7400 EAL0300
P.O. Box 1088	124 W 8 th Street, Rm 308
Austin, Texas 78767-8845	Austin, Texas 78701
	Reception Phone: (512) 974-2500

**NOTE: Offers must be received and time stamped in the Purchasing Office prior to the Due Date and Time. It is the
responsibility of the Offeror to ensure that their Offer arrives at the receptionist's desk in the Purchasing Office prior to the
time and date indicated. Arrival at the City's mailroom, mail terminal, or post office box will not constitute the Offer arriving
on time. See Section 0200 for additional solicitation instructions.**

All Offers (including Compliance Plans) that are not submitted in a sealed envelope or container will not be considered.

**SUBMIT 1 ORIGINAL PAPER COPY AND 1 ELECTRONIC COPY IN PDF ON A FLASH DRIVE OF
YOUR RESPONSE**

*****SIGNATURE FOR SUBMITTAL REQUIRED ON PAGE 3 OF THIS DOCUMENT*****

This solicitation is comprised of the following required sections. Please ensure to carefully read each section including those incorporated by reference. By signing this document, you are agreeing to all the items contained herein and will be bound to all terms.

SECTION NO.	TITLE	PAGES
0100	STANDARD PURCHASE DEFINITIONS	*
0200	STANDARD SOLICITATION INSTRUCTIONS	*
0300	STANDARD PURCHASE TERMS AND CONDITIONS	*
0400	SUPPLEMENTAL PURCHASE PROVISIONS	4
0500	SCOPE OF WORK	1
0600	PROPOSAL PREPARATION INSTRUCTIONS & EVALUATION FACTORS	4
0605	LOCAL BUSINESS PRESENCE IDENTIFICATION FORM – Complete and return	2
0800	NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION–Complete and return	2
0805	NON-SUSPENSION OR DEBARMENT CERTIFICATION	*
0810	NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING CERTIFICATION	*
0835	NONRESIDENT BIDDER PROVISIONS – Complete and return	1
0900	SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM – Complete & return	1
0905	SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN – Complete and return if applicable	3

*** Documents are hereby incorporated into this Solicitation by reference, with the same force and effect as if they were incorporated in full text. The full text versions of the * Sections are available on the Internet at the following online address:**

http://www.austintexas.gov/financeonline/vendor_connection/index.cfm#STANDARDBIDDOCUMENTS

If you do not have access to the Internet, you may obtain a copy of these Sections from the City of Austin Purchasing Office located in the Municipal Building, 124 West 8th Street, Room #308 Austin, Texas 78701; phone (512) 974-2500. Please have the Solicitation number available so that the staff can select the proper documents. These documents can be mailed, expressed mailed, or faxed to you.

INTERESTED PARTIES DISCLOSURE

In addition, Section 2252.908 of the Texas Government Code requires the successful offeror to complete a Form 1295 “Certificate of Interested Parties” that is signed and notarized for a contract award requiring council authorization. The “Certificate of Interested Parties” form must be completed on the Texas Ethics Commission website, printed, signed and submitted to the City by the authorized agent of the Business Entity with acknowledgment that disclosure is made under oath and under penalty of perjury prior to final contract execution.

https://www.ethics.state.tx.us/whatsnew/elf_info_form1295.htm

The undersigned, by his/her signature, represents that he/she is submitting a binding offer and is authorized to bind the respondent to fully comply with the solicitation document contained herein. The Respondent, by submitting and signing below, acknowledges that he/she has received and read the entire document packet sections defined above including all documents incorporated by reference, and agrees to be bound by the terms therein.

Company Name: _____

Company Address: _____

City, State, Zip: _____

Federal Tax ID No. _____

Printed Name of Officer or Authorized
Representative: _____

Title: _____

Signature of Officer or Authorized
Representative: _____

Date: _____

Email Address: _____

Phone Number: _____

*** Proposal response must be submitted with this Offer sheet to be considered for award**

**CITY OF AUSTIN
PURCHASING OFFICE
SECTION 0400: SUPPLEMENTAL PURCHASE PROVISIONS
RFP 7400 EAL0300: ARBITRAGE COMPLIANCE SERVICES**

The following Supplemental Purchasing Provisions apply to this solicitation:

1. **EXPLANATIONS OR CLARIFICATIONS:** (reference paragraph 5 in Section 0200)

All requests for explanations or clarifications must be submitted in writing to the Purchasing Office no later than five business days prior to the Solicitation Due Date.

2. **INSURANCE:** Insurance is required for this solicitation.

A. **General Requirements:** See Section 0300, Standard Purchase Terms and Conditions, paragraph 32, entitled Insurance, for general insurance requirements.

- i. The Contractor shall provide a Certificate of Insurance as verification of coverages required below to the City at the below address prior to contract execution and within 14 calendar days after written request from the City. Failure to provide the required Certificate of Insurance may subject the Offer to disqualification from consideration for award
- ii. The Contractor shall not commence work until the required insurance is obtained and until such insurance has been reviewed by the City. Approval of insurance by the City shall not relieve or decrease the liability of the Contractor hereunder and shall not be construed to be a limitation of liability on the part of the Contractor.
- iii. The Contractor must also forward a Certificate of Insurance to the City whenever a previously identified policy period has expired, or an extension option or holdover period is exercised, as verification of continuing coverage.
- iv. The Certificate of Insurance, and updates, shall be mailed to the following address:

City of Austin Purchasing Office
P. O. Box 1088
Austin, Texas 78767

B. **Specific Coverage Requirements:** The Contractor shall at a minimum carry insurance in the types and amounts indicated below for the duration of the Contract, including extension options and hold over periods, and during any warranty period. These insurance coverages are required minimums and are not intended to limit the responsibility or liability of the Contractor.

- i. **Worker's Compensation and Employers' Liability Insurance:** Coverage shall be consistent with statutory benefits outlined in the Texas Worker's Compensation Act (Section 401). The minimum policy limits for Employer's Liability are \$100,000 bodily injury each accident, \$500,000 bodily injury by disease policy limit and \$100,000 bodily injury by disease each employee.
 - (1) The Contractor's policy shall apply to the State of Texas and include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Form WC420304, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Form WC420601, or equivalent coverage
- ii. **Commercial General Liability Insurance:** The minimum bodily injury and property damage per occurrence are \$500,000 for coverages A (Bodily Injury and Property Damage) and B (Personal and Advertising Injury).
 - (1) The policy shall contain the following provisions:
 - (a) Contractual liability coverage for liability assumed under the Contract and all other Contracts related to the project.
 - (b) Contractor/Subcontracted Work.
 - (c) Products/Completed Operations Liability for the duration of the warranty period.
 - (d) If the project involves digging or drilling provisions must be included that provide Explosion, Collapse, and/or Underground Coverage.

**CITY OF AUSTIN
PURCHASING OFFICE
SECTION 0400: SUPPLEMENTAL PURCHASE PROVISIONS
RFP 7400 EAL0300: ARBITRAGE COMPLIANCE SERVICES**

- (2) The policy shall also include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CG 2404, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CG 0205, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CG 2010, or equivalent coverage
- iii. **Business Automobile Liability Insurance:** The Contractor shall provide coverage for all owned, non-owned and hired vehicles with a minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage. Alternate acceptable limits are \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability per accident.
 - (1) The policy shall include these endorsements in favor of the City of Austin:
 - (a) Waiver of Subrogation, Endorsement CA0444, or equivalent coverage
 - (b) Thirty (30) days Notice of Cancellation, Endorsement CA0244, or equivalent coverage
 - (c) The City of Austin listed as an additional insured, Endorsement CA2048, or equivalent coverage.
- iv. **Professional Liability Insurance:** The Contractor shall provide coverage, at a minimum limit of \$1,000,000 per claim, to pay on behalf of the assured all sums which the assured shall become legally obligated to pay as damages by reason of any negligent act, error, or omission arising out of the performance of professional services under this Agreement.

If coverage is written on a claims-made basis, the retroactive date shall be prior to or coincident with the date of the Contract and the certificate of insurance shall state that the coverage is claims-made and indicate the retroactive date. This coverage shall be continuous and will be provided for 24 months following the completion of the contract.

- C. **Endorsements:** The specific insurance coverage endorsements specified above, or their equivalents must be provided. In the event that endorsements, which are the equivalent of the required coverage, are proposed to be substituted for the required coverage, copies of the equivalent endorsements must be provided for the City's review and approval.

3. **TERM OF CONTRACT:**

- A. The Contract shall be in effect for an initial term of 36 months and may be extended thereafter for up to two additional 12 month periods, subject to the approval of the Contractor and the City Purchasing Officer or his designee.
- B. Upon expiration of the initial term or period of extension, the Contractor agrees to hold over under the terms and conditions of this agreement for such a period of time as is reasonably necessary to re-solicit and/or complete the project (not to exceed 120 days unless mutually agreed on in writing).

- 4. **QUANTITIES:** The quantities listed herein are estimates for the period of the Contract. The City reserves the right to purchase more or less of these quantities as may be required during the Contract term. Quantities will be as needed and specified by the City for each order. Unless specified in the solicitation, there are no minimum order quantities.

5. **INVOICES and PAYMENT:** (reference paragraphs 12 and 13 in Section 0300)

- A. Invoices shall contain a unique invoice number and the information required in Section 0300, paragraph 12, entitled "Invoices." Invoices received without all required information cannot be processed and will be returned to the vendor.

Invoices shall be mailed to the below address:

**CITY OF AUSTIN
PURCHASING OFFICE
SECTION 0400: SUPPLEMENTAL PURCHASE PROVISIONS
RFP 7400 EAL0300: ARBITRAGE COMPLIANCE SERVICES**

	City of Austin
Department	Financial Services Department
Attn:	Accounts Payable
Address	P.O. Box 1088
City, State Zip Code	Austin, TX 78767

- B. The Contractor agrees to accept payment by either credit card, check or Electronic Funds Transfer (EFT) for all goods and/or services provided under the Contract. The Contractor shall factor the cost of processing credit card payments into the Offer. There shall be no additional charges, surcharges, or penalties to the City for payments made by credit card.

6. NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING:

- A. On November 10, 2011, the Austin City Council adopted Ordinance No. 20111110-052 amending Chapter 2.7, Article 6 of the City Code relating to Anti-Lobbying and Procurement. The policy defined in this Code applies to Solicitations for goods and/or services requiring City Council approval under City Charter Article VII, Section 15 (Purchase Procedures). During the No-Contact Period, Offerors or potential Offerors are prohibited from making a representation to anyone other than the Authorized Contact Person in the Solicitation as the contact for questions and comments regarding the Solicitation.
- B. If during the No-Contact Period an Offeror makes a representation to anyone other than the Authorized Contact Person for the Solicitation, the Offeror's Offer is disqualified from further consideration except as permitted in the Ordinance.
- C. If an Offeror has been disqualified under this article more than two times in a sixty (60) month period, the Purchasing Officer shall debar the Offeror from doing business with the City for a period not to exceed three (3) years, provided the Offeror is given written notice and a hearing in advance of the debarment.
- D. The City requires Offerors submitting Offers on this Solicitation to certify that the Offeror has not in any way directly or indirectly made representations to anyone other than the Authorized Contact Person during the No-Contact Period as defined in the Ordinance. The text of the City Ordinance is posted on the Internet at: <http://www.ci.austin.tx.us/edims/document.cfm?id=161145>

8. OWNERSHIP AND USE OF DELIVERABLES: The City shall own all rights, titles, and interests throughout the world in and to the Deliverables.

- A. **Patents:** As to any patentable subject matter contained in the Deliverables, the Contractor agrees to disclose such patentable subject matter to the City. Further, if requested by the City, the Contractor agrees to assign and, if necessary, cause each of its employees to assign the entire right, title, and interest to specific inventions under such patentable subject matter to the City and to execute, acknowledge, and deliver and, if necessary, cause each of its employees to execute, acknowledge, and deliver an assignment of letters patent, in a form to be reasonably approved by the City, to the City upon request by the City.
- B. **Copyrights:** As to any Deliverable containing copyrighted subject matter, the Contractor agrees that upon their creation, such Deliverables shall be considered as work made-for-hire by the Contractor for the City and the City shall own all copyrights in and to such Deliverables, provided however, that nothing in this Paragraph 36 shall negate the City's sole or joint ownership of any such Deliverables arising by virtue of the City's sole or joint authorship of such Deliverables. Should by operation of law,

**CITY OF AUSTIN
PURCHASING OFFICE
SECTION 0400: SUPPLEMENTAL PURCHASE PROVISIONS
RFP 7400 EAL0300: ARBITRAGE COMPLIANCE SERVICES**

such Deliverables not be considered work made-for-hire, the Contractor hereby assigns to the City (and agrees to cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver an assignment to the City of Austin) all worldwide right, title, and interest in and to such Deliverables. With respect to such work made-for-hire, the Contractor agrees to execute, acknowledge and deliver and cause each of its employees providing services to the City hereunder to execute, acknowledge, and deliver a work-for-hire agreement, in a form to be reasonably approved by the City, to the City upon delivery of such Deliverables to the City or at such other time as the City may request.

- C. **Additional Assignments:** The Contractor further agrees to, and if applicable, cause each of its employees to execute, acknowledge, and deliver all applications, specifications, oaths, assignments, and all other instruments which the City might reasonably deem necessary in order to apply for and obtain copyright protection, mask work registration, trademark registration and/or protection, letters patent, or any similar rights in any and all countries and in order to assign and convey to the City, its successors, assigns, and nominees, the sole and exclusive right, title, and interest in and to the Deliverables, The Contractor's obligations to execute acknowledge, and deliver (or cause to be executed, acknowledged, and delivered) instruments or papers such as those described in this Paragraph 36 A., B., and C. shall continue after the termination of this Contract with respect to such Deliverables. In the event the City should not seek to obtain copyright protection, mask work registration or patent protection for any of the Deliverables, but should arise to keep the same secret, the Contractor agrees to treat the same as Confidential Information under the terms of Paragraph above.

38. **CONTRACT MANAGER:** The following person is designated as Contract Manager, and will act as the contact point between the City and the Contractor during the term of the Contract:

Bryan Rivera

512-974-7891

Bryan.Rivera@austintexas.gov

*Note: The above listed Contract Manager is not the authorized Contact Person for purposes of the **NON-COLLUSION, NON-CONFLICT OF INTEREST, AND ANTI-LOBBYING Provision** of this Section; and therefore, contact with the Contract Manager is prohibited during the no contact period.

CITY OF AUSTIN PURCHASING OFFICE
SECTION 0500: SCOPE OF WORK
RFP 7400 EAL0300: ARBITRAGE COMPLIANCE SERVICES

1. **PURPOSE**

The City of Austin (City) seeks to contract with a qualified Contractor experienced in providing arbitrage compliance and related services as required to ensure compliance with Internal Revenue Code Section 148 and Treasury regulations promulgated thereunder (hereinafter referred to as "Section 148").

2. **BACKGROUND**

As of the date of this Solicitation, the City has approximately 45 outstanding bond issues for which Section 148 calculations are performed (see Appendix A). Bond proceeds are invested by the Treasury Office of the City.

3. **CONTRACTOR'S RESPONSIBILITIES**

The Contractor shall:

- 3.1 Perform all required calculations including a calculation of arbitrage yield, arbitrage liability, and yield restriction requirements not less than annually for each issue of outstanding obligations listed on Appendix A and subsequent issues as needed.
- 3.2 Create and maintain records necessary to determine arbitrage liability, if any, on outstanding obligations of the City.
- 3.3 Review reports of investment and expenditure of bond proceeds (as shown in Appendix B), within the meaning of Section 148, as necessary to ensure compliance with Section 148.
- 3.4 Assist the City in preparing or causing to be prepared any schedules, reports, or records necessary to perform or support a calculation of arbitrage liability.
- 3.5 Prepare transmittals and forms necessary to report and pay arbitrage liability on time.
- 3.6 Provide advice and recommendations as the City may request concerning unique or extraordinary compliance issues that may arise.
- 3.7 Review opportunities and recommend options to minimize existing liabilities or increase retainable earnings.
- 3.8 Prepare status reports on a monthly basis highlighting upcoming calculation dates and communicate to the City any required information for which the City will be responsible.
- 3.9 At the City's request, perform services on bonds issued subsequent to the Solicitation.
- 3.10 **Reporting.**
 - 3.10.1 Provide a report of the calculations, including supporting documentation, of arbitrage liability within 90 days after the end of each fiscal year. The City's fiscal year-end is September 30.
 - 3.10.2 Provide status reports on a monthly basis highlighting upcoming calculation dates and communicate to the City any required information for which the City will be responsible.

CITY OF AUSTIN PURCHASING OFFICE
SECTION 0600: PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
RFP 7400 EAL0300: ARBITRAGE COMPLIANCE SERVICES

1. PROPOSAL FORMAT

Submit 1 original and 1 electronic copy of your Proposal on a flash drive. Submit the original on 8.5 x 11 inch paper, bound or in a 3-ring binder. The original proposal must be clearly labeled as “original” and must include the original signature of the person authorized to sign on behalf of the Proposer.

Organize your Proposal in the information sequence described below. Use tabs to divide each part of your Proposal and include a Table of Contents with page numbers. Proposers should provide all details in the Proposal described below and any additional information you deem necessary to evaluate your Proposal.

A. City of Austin Purchasing Documents:

Complete and submit the following documents:

- 1) Signed Offer Sheet (pages 1-3)
- 2) Signed Addendums (all pages)
- 3) Completed and Signed Section 0605 – Local Business Presence Identification Form
- 4) Completed and Signed Section 0800 – Non-Discrimination and Non-Retaliation Certification
- 5) Completed and Signed Section 0835 – Non-Resident Bidder Provisions
- 6) Completed and Signed Section 0900 – Subcontracting/Sub-Consulting Utilization Form
- 7) Completed and Signed Section 0905 (if applicable) – Subcontracting/Sub-Consulting Utilization Plan

B. Authorized Negotiator: Include name, address, and telephone number of person in your organization authorized to negotiate Contract terms and render binding decisions on Contract matters.

C. Exceptions: Identify any exceptions you are requesting to the terms, conditions, and services described in this Solicitation. Be advised that exceptions to any portion of the Solicitation may jeopardize acceptance of the Proposal.

D. Experience and Qualification (40 points):

Provide the following information:

- i. Full name and address of your company; identify parent company if you are a subsidiary. Indicate whether you operate as a partnership, corporation, or individual. Specify the branch office or other subordinate element which will perform, or assist in performing, work herein. Include the State(s) in which incorporated or licensed to operate and how long your company has been in business.
- ii. Description of past experience. Do not include experience unless personnel assigned to this project actively participated. Do not include experience prior to 2000.
 - a) Provide general experience performing services related to the Scope of Work and experience specifically with regard to transactions issued by municipalities and municipal-level entities. Highlight experience with complex tax-exempt structures such as variable rate issues, advance refundings, commingled reserve funds, etc. Include at least two examples of work performed at the branch office which will have primary responsibility for this engagement. These examples should reflect current applicable laws, rules, and regulations.
 - b) Identify and discuss two transactions listed in your response that are most applicable and best demonstrate your ability to serve the City.
 - c) Describe the firm's experience in assisting a client with an audit or other regulatory proceedings related to the services described in the Scope of Work.

CITY OF AUSTIN PURCHASING OFFICE
SECTION 0600: PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
RFP 7400 EAL0300: ARBITRAGE COMPLIANCE SERVICES

- iii. List of current arbitration compliance clients and the number of issues covered by the contract for each client.
- iv. Three references. All client reference information must be supported and verified. Reference contacts must be aware that they are being used and agreeable to follow-up by the City.

At minimum, include:

- a) Client/agency name
 - b) Contact name (agency project manager), telephone, and email
 - c) Project name
 - d) Year project took place and length of project
 - e) Project description
 - f) Personnel assigned to project and their role in the project
- v. Provide names, titles, and qualifications of all professional personnel including the Project Manager who will be assigned to this project. Provide resumes and/or describe each proposed staff's experience and qualifications including years of experience in their current position, educational background, certifications/accreditations they hold, etc.

- E. **Approach** (25 points): Describe your approach for accomplishing the required work. At minimum, include:

- i. Description of methodology for accomplishing the work, including how you ensure that all IRS requirements are addressed.
- ii. Step by step plan for accomplishing the work.
- iii. Timeline for completing reports.
- iv. Sample report.
- v. A statement of your compliance with all applicable rules and regulations of Federal, State and Local governing entities. The Proposer must state his compliance with terms of this Solicitation.
- vi. General explanation and chart which specifies project leadership and reporting responsibilities; and interface the team with City project management and team personnel. If use of subcontractors is proposed, identify their placement in the primary management structure, and provide internal management description for each subcontractor.

- F. **Cost Proposal** (25 points): Provide your total fees to complete services described in the Scope of Work based on the issuances in Appendix A. Total fees should include a breakdown of your proposed fees per bond issue and should be inclusive of set up fee, preparation of Form 8038-T, yield reduction report, personnel, and overhead, and any other costs associated with completing the Scope of Work.

- G. **Hourly Rates**: Provide hourly rates for key personnel who will provide services under the Contract.

2. **Proposal Acceptance Period**: All proposals are valid for a period of one hundred and eighty (180) calendar days subsequent to the RFP closing date unless a longer acceptance period is offered in the proposal

CITY OF AUSTIN PURCHASING OFFICE
SECTION 0600: PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
RFP 7400 EAL0300: ARBITRAGE COMPLIANCE SERVICES

3. **Proprietary Information:** All material submitted to the City becomes public property and is subject to the Texas Open Records Act upon receipt. If a Proposer does not desire proprietary information in the proposal to be disclosed, each page must be identified and marked proprietary at time of submittal. The City will, to the extent allowed by law, endeavor to protect such information from disclosure. The final decision as to what information must be disclosed, however, lies with the Texas Attorney General. Failure to identify proprietary information will result in all unmarked sections being deemed non-proprietary and available upon public request.

4. **PROPOSAL PREPARATION COSTS:**

All costs directly or indirectly related to preparation of a response to the RFP or any oral presentation required to supplement and/or clarify a proposal which may be required by the City shall be the sole responsibility of the Proposer.

5. **EVALUATION FACTORS AND AWARD**

A. **Competitive Selection:** This procurement will comply with applicable City Policy. The successful Proposer will be selected by the City on a rational basis. Evaluation factors outlined in Paragraph B below shall be applied to all eligible, responsive Proposers in comparing proposals and selecting the Best Offeror. Award of a Contract may be made without discussion with Proposers after proposals are received. Proposals should, therefore, be submitted on the most favorable terms.

B. **Evaluation Factors:**

i. 100 points.

(1) Experience and Qualifications – 40 points

(2) Approach and Methodology – 25 points

(3) Cost Proposal – 25 points

Lowest proposed price will receive the maximum points, and percentage ratios will be provided for the remaining proposals.

(4) Local Business Presence – 10 points

The City seeks opportunities for businesses in the Austin Corporate City Limits to participate on City contracts. A firm (Proposer or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

Points will be awarded through a combination of the Proposer's Local Business Presence and/or the Local Business Presence of their subcontractors. Evaluation of the Team's Percentage of Local Business Presence will be based on the dollar amount of work as reflected in the Proposer's MBE/WBE Compliance Plan or MBE/WBE Utilization Plan. Specify if and by which definition the Proposer or Subcontractor(s) have a local business presence. Local Business Presence shall be scored according to this table:

Team's Local Business Presence	Points Awarded
Local business presence of 90% to 100%	10
Local business presence of 75% to 89%	8

CITY OF AUSTIN PURCHASING OFFICE
SECTION 0600: PROPOSAL PREPARATION INSTRUCTIONS AND EVALUATION FACTORS
RFP 7400 EAL0300: ARBITRAGE COMPLIANCE SERVICES

Local business presence of 50% to 74%	6
Local business presence of 25% to 49%	4
Local presence of between 1 and 24%	2
No local presence	0

- ii. **Optional Presentations and Demonstrations.** The City will score Proposals on the basis of the criteria listed above. The City may select a “short list” of Offerors based on those scores. “Short-listed” Offerors may be invited for presentations, or demonstrations with the City. The City reserves the right to re-score “short-listed” Proposals as a result, and to make award recommendations on that basis.

C. Contract Payment and Retainage:

The Contract shall be prepared under the direction of the City, and shall incorporate all applicable provisions. A firm fixed-price or not-to-exceed Contract is contemplated, with progress payments as mutually determined to be appropriate.

The City reserves the right to negotiate individual elements of any proposal and to reject any and all proposals.

Section 0605: Local Business Presence Identification

A firm (Offeror or Subcontractor) is considered to have a Local Business Presence if the firm is headquartered in the Austin Corporate City Limits, or has a branch office located in the Austin Corporate City Limits in operation for the last five (5) years, currently employs residents of the City of Austin, Texas, and will use employees that reside in the City of Austin, Texas, to support this Contract. The City defines headquarters as the administrative center where most of the important functions and full responsibility for managing and coordinating the business activities of the firm are located. The City defines branch office as a smaller, remotely located office that is separate from a firm's headquarters that offers the services requested and required under this solicitation.

OFFEROR MUST SUBMIT THE FOLLOWING INFORMATION FOR EACH LOCAL BUSINESS (INCLUDING THE OFFEROR, IF APPLICABLE) TO BE CONSIDERED FOR LOCAL PRESENCE.

NOTE: ALL FIRMS MUST BE IDENTIFIED ON THE MBE/WBE COMPLIANCE PLAN OR NO GOALS UTILIZATION PLAN (REFERENCE SECTION 0900).

USE ADDITIONAL PAGES AS NECESSARY

OFFEROR:

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years?	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No

Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

SUBCONTRACTOR(S):

Name of Local Firm		
Physical Address		
Is your headquarters located in the Corporate City Limits? (circle one)	Yes	No
or		
Has your branch office been located in the Corporate City Limits for the last 5 years	Yes	No
Will your business be providing additional economic development opportunities created by the contract award? (e.g., hiring, or employing residents of the City of Austin or increasing tax revenue?)	Yes	No

City of Austin, Texas
Section 0800
NON-DISCRIMINATION AND NON-RETALIATION CERTIFICATION

City of Austin, Texas

Equal Employment/Fair Housing Office

To: City of Austin, Texas,

I hereby certify that our firm complies with the Code of the City of Austin, Section 5-4-2 as reiterated below, and agrees:

- (1) Not to engage in any discriminatory employment practice defined in this chapter.
- (2) To take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without discrimination being practiced against them as defined in this chapter, including affirmative action relative to employment, promotion, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rate of pay or other forms of compensation, and selection for training or any other terms, conditions or privileges of employment.
- (3) To post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Equal Employment/Fair Housing Office setting forth the provisions of this chapter.
- (4) To state in all solicitations or advertisements for employees placed by or on behalf of the Contractor, that all qualified applicants will receive consideration for employment without regard to race, creed, color, religion, national origin, sexual orientation, gender identity, disability, sex or age.
- (5) To obtain a written statement from any labor union or labor organization furnishing labor or service to Contractors in which said union or organization has agreed not to engage in any discriminatory employment practices as defined in this chapter and to take affirmative action to implement policies and provisions of this chapter.
- (6) To cooperate fully with City and the Equal Employment/Fair Housing Office in connection with any investigation or conciliation effort of the Equal Employment/Fair Housing Office to ensure that the purpose of the provisions against discriminatory employment practices are being carried out.
- (7) To require of all subcontractors having 15 or more employees who hold any subcontract providing for the expenditure of \$2,000 or more in connection with any contract with the City subject to the terms of this chapter that they do not engage in any discriminatory employment practice as defined in this chapter

For the purposes of this Offer and any resulting Contract, Contractor adopts the provisions of the City's Minimum Standard Non-Discrimination and Non-Retaliation Policy set forth below.

City of Austin
Minimum Standard Non-Discrimination and Non-Retaliation in Employment Policy

As an Equal Employment Opportunity (EEO) employer, the Contractor will conduct its personnel activities in accordance with established federal, state and local EEO laws and regulations.

The Contractor will not discriminate against any applicant or employee based on race, creed, color, national origin, sex, age, religion, veteran status, gender identity, disability, or sexual orientation. This policy covers all aspects of employment, including hiring, placement, upgrading, transfer, demotion, recruitment, recruitment advertising, selection for training and apprenticeship, rates of pay or other forms of compensation, and layoff or termination.

The Contractor agrees to prohibit retaliation, discharge or otherwise discrimination against any employee or applicant for employment who has inquired about, discussed or disclosed their compensation.

Further, employees who experience discrimination, sexual harassment, or another form of harassment should immediately report it to their supervisor. If this is not a suitable avenue for addressing their complaint, employees are advised to contact another member of management or their human resources representative. No employee shall be discriminated against, harassed, intimidated, nor suffer any reprisal as a result of reporting a violation of this policy. Furthermore, any employee, supervisor, or manager who becomes aware of any such discrimination or harassment should immediately report it to executive management or the human resources office to ensure that such conduct does

not continue.

Contractor agrees that to the extent of any inconsistency, omission, or conflict with its current non-discrimination and non-retaliation employment policy, the Contractor has expressly adopted the provisions of the City's Minimum Non-Discrimination Policy contained in Section 5-4-2 of the City Code and set forth above, as the Contractor's Non-Discrimination Policy or as an amendment to such Policy and such provisions are intended to not only supplement the Contractor's policy, but will also supersede the Contractor's policy to the extent of any conflict.

UPON CONTRACT AWARD, THE CONTRACTOR SHALL PROVIDE THE CITY A COPY OF THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICIES ON COMPANY LETTERHEAD, WHICH CONFORMS IN FORM, SCOPE, AND CONTENT TO THE CITY'S MINIMUM NON-DISCRIMINATION AND NON-RETALIATION POLICIES, AS SET FORTH HEREIN, **OR** THIS NON-DISCRIMINATION AND NON-RETALIATION POLICY, WHICH HAS BEEN ADOPTED BY THE CONTRACTOR FOR ALL PURPOSES WILL BE CONSIDERED THE CONTRACTOR'S NON-DISCRIMINATION AND NON-RETALIATION POLICY WITHOUT THE REQUIREMENT OF A SEPARATE SUBMITTAL.

Sanctions:

Our firm understands that non-compliance with Chapter 5-4 and the City's Non-Retaliation Policy may result in sanctions, including termination of the contract and suspension or debarment from participation in future City contracts until deemed compliant with the requirements of Chapter 5-4 and the Non-Retaliation Policy.

Term:

The Contractor agrees that this Section 0800 Non-Discrimination and Non-Retaliation Certificate of the Contractor's separate conforming policy, which the Contractor has executed and filed with the City, will remain in force and effect for one year from the date of filing. The Contractor further agrees that, in consideration of the receipt of continued Contract payment, the Contractor's Non-Discrimination and Non-Retaliation Policy will automatically renew from year-to-year for the term of the underlying Contract.

Dated this _____ day of _____, _____

CONTRACTOR	_____
Authorized Signature	_____
Title	_____

Section 0835: Non-Resident Bidder Provisions

Company Name _____

- A. Bidder must answer the following questions in accordance with Vernon's Texas Statutes and Codes Annotated Government Code 2252.002, as amended:

Is the Bidder that is making and submitting this Bid a "Resident Bidder" or a "non-resident Bidder"?

Answer: _____

- (1) Texas Resident Bidder- A Bidder whose principle place of business is in Texas and includes a Contractor whose ultimate parent company or majority owner has its principal place of business in Texas.
(2) Nonresident Bidder- A Bidder who is not a Texas Resident Bidder.

- B. If the Bidder is a "Nonresident Bidder" does the state, in which the Nonresident Bidder's principal place of business is located, have a law requiring a Nonresident Bidder of that state to bid a certain amount or percentage under the Bid of a Resident Bidder of that state in order for the nonresident Bidder of that state to be awarded a Contract on such bid in said state?

Answer: _____ Which State: _____

- C. If the answer to Question B is "yes", then what amount or percentage must a Texas Resident Bidder bid under the bid price of a Resident Bidder of that state in order to be awarded a Contract on such bid in said state?

Answer: _____

Section 0900: SUBCONTRACTING/SUB-CONSULTING UTILIZATION FORM

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form**

SOLICITATION NUMBER:
SOLICITATION TITLE:

In accordance with the City of Austin's Minority and Women-Owned Business Enterprises (M/WBE) Procurement Program (Program), Chapters 2-9A/B/C/D of the City Code and M/WBE Program Rules, this Solicitation was reviewed by the Small and Minority Business Resources Department (SMBR) to determine if M/WBE Subcontractor/Sub-Consultant ("Subcontractor") Goals could be applied. Due to insufficient subcontracting/subconsultant opportunities and/or insufficient availability of M/WBE certified firms, SMBR has assigned no subcontracting goals for this Solicitation. However, Offerors who choose to use Subcontractors must comply with the City's M/WBE Procurement Program as described below. Additionally, if the Contractor seeks to add Subcontractors after the Contract is awarded, the Program requirements shall apply to any Contract(s) resulting from this Solicitation.

Instructions:

- a.) Offerors who do not intend to use Subcontractors shall check the "NO" box and follow the corresponding instructions.
b.) Offerors who intend to use Subcontractors shall check the applicable "YES" box and follow the instructions. **Offers that do not include the following required documents shall be deemed non-compliant or nonresponsive as applicable, and the Offeror's submission may not be considered for award.**

☐ **NO, I DO NOT intend to use Subcontractors/Sub-consultants.**

Instructions: Offerors that do not intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form) and include it with their sealed Offer.

☐ **YES, I DO intend to use Subcontractors /Sub-consultants.**

Instructions: Offerors that do intend to use Subcontractors shall complete and sign this form below (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Form), and follow the additional Instructions in the (Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan). Contact SMBR if there are any questions about submitting these forms.

Offeror Information			
Company Name			
City Vendor ID Code			
Physical Address			
City, State Zip			
Phone Number		Email Address	
If the Offeror City of Austin M/WBE certified?	<input type="checkbox"/> NO <input type="checkbox"/> YES Indicate one: <input type="checkbox"/> MBE <input type="checkbox"/> WBE <input type="checkbox"/> MBE/WBE Joint Venture		
<p>Offeror Certification: I understand that even though SMBR did not assign subcontract goals to this Solicitation, I will comply with the City's M/WBE Procurement Program if I intend to include Subcontractors in my Offer. I further agree that this completed Subcontracting/Sub-Consulting Utilization Form, and if applicable my completed Subcontracting/Sub-Consulting Utilization Plan, shall become a part of any Contract I may be awarded as the result of this Solicitation. Further, if I am awarded a Contract and I am not using Subcontractor(s) but later intend to add Subcontractor(s), before the Subcontractor(s) is hired or begins work, I will comply with the City's M/WBE Procurement Program and submit the Request For Change form to add any Subcontractor(s) to the Project Manager or the Contract Manager for prior authorization by the City and perform Good Faith Efforts (GFE), if applicable. I understand that, if a Subcontractor is not listed in my Subcontracting/Sub-Consulting Utilization Plan, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my Request for Change form. I understand that, if a Subcontractor is not listed in my Subcontracting/Sub-Consulting Utilization Plan, it is a violation of the City's M/WBE Procurement Program for me to hire the Subcontractor or allow the Subcontractor to begin work, unless I first obtain City approval of my Request for Change form.</p>			
Name and Title of Authorized Representative (Print or Type)		Signature/Date	

Section 0905: SUBCONTRACTING/SUB-CONSULTING UTILIZATION PLAN

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan**

SOLICITATION NUMBER:
SOLICITATION TITLE:

INSTRUCTIONS: Offerors who DO intend to use Subcontractors may utilize M/WBE Subcontractor(s) or perform Good Faith efforts when retaining Non-certified Subcontractor(s). Offerors must determine which type of Subcontractor(s) they are anticipating to use (CERTIFIED OR NON-CERTIFIED), check the box of their applicable decision, and comply with the additional instructions associated with that particular selection.

- ☐ I intend to use City of Austin CERTIFIED M/WBE Subcontractor/Sub-consultant(s).

Instructions: Offerors may use Subcontractor(s) that ARE City of Austin certified M/WBE firms. Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to confirm if the Offeror's intended Subcontractor(s) are City of Austin certified M/WBE and if these firm(s) are certified to provide the goods and services the Offeror intends to subcontract. If the Offeror's Subcontractor(s) are current valid certified City of Austin M/WBE firms, the Offeror shall insert the name(s) of their Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)

- ☐ I intend to use NON-CERTIFIED Subcontractor/Sub-Consultant(s) after performing Good Faith Efforts.

Instructions: Offerors may use Subcontractors that ARE NOT City of Austin certified M/WBE firms ONLY after Offerors have first demonstrated Good Faith Efforts to provide subcontracting opportunities to City of Austin M/WBE firms.

STEP ONE: Contact SMBR for an availability list for the scope(s) of work you wish to subcontract;

STEP TWO: Perform Good Faith Efforts (Check List provided below);

STEP THREE: Offerors shall insert the name(s) of their certified or non-certified Subcontractor(s) into the table below and must include the following documents in their sealed Offer:

- Subcontracting/Sub-Consulting Utilization Form (completed and signed)
- Subcontracting/Sub-Consulting Utilization Plan (completed)
- All required documentation demonstrating the Offeror's performance of Good Faith Efforts (see Check List below)

GOOD FAITH EFFORTS CHECK LIST –

When using NON-CERTIFIED Subcontractor/Sub-consultants(s), **ALL** of the following **CHECK BOXES MUST** be completed in order to meet and comply with the Good Faith Effort requirements and all documentation must be included in your sealed Offer. Documentation CANNOT be added or changed after submission of the bid.

- ☐ **Contact SMBR.** Offerors shall contact SMBR (512-974-7600 or SMBRComplianceDocuments@austintexas.gov) to obtain a list of City of Austin certified M/WBE firms that are certified to provide the goods and services the Offeror intends to subcontract out. (Availability List). Offerors shall document their contact(s) with SMBR in the "SMBR Contact Information" table on the following page.
- ☐ **Contact M/WBE firms.** Offerors shall contact all of the M/WBE firms on the Availability List with a Significant Local Business Presence which is the **Austin Metropolitan Statistical Area**, to provide information on the proposed goods and services proposed to be subcontracted and give the Subcontractor the opportunity to respond on their interest to bid on the proposed scope of work. When making the contacts, Offerors shall use at least two (2) of the following communication methods: email, fax, US mail or phone. Offerors shall give the contacted M/WBE firms at least seven days to respond with their interest. Offerors shall document all evidence of their contact(s) including: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan**

SOLICITATION NUMBER:

SOLICITATION TITLE:

- ☐ **Follow up with responding M/WBE firms.** Offeror shall follow up with all M/WBE firms that respond to the Offeror's request. Offerors shall provide written evidence of their contact(s): emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, company contacted, phone number, and contact person.

- ☐ **Advertise.** Offerors shall place an advertisement of the subcontracting opportunity in a local publication (i.e. newspaper, minority or women organizations, or electronic/social media). Offerors shall include a copy of their advertisement, including the name of the local publication and the date the advertisement was published.

- ☐ **Use a Community Organization.** Offerors shall solicit the services of a community organization(s); minority persons/women contractors'/trade group(s); local, state, and federal minority persons/women business assistance office(s); and other organizations to help solicit M/WBE firms. Offerors shall provide written evidence of their Proof of contact(s) include: emails, fax confirmations, proof of mail delivery, and/or phone logs. These documents shall show the date(s) of contact, organization contacted, phone number, email address and contact person.

**MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISE (MBE/WBE)
PROCUREMENT PROGRAM
Subcontracting/Sub-Consulting ("Subcontractor") Utilization Plan**

SOLICITATION NUMBER:
SOLICITATION TITLE:

(Offerors may duplicate this page to add additional Subcontractors as needed)

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

Subcontractor/Sub-consultant	
City of Austin Certified	<input type="checkbox"/> MBE <input type="checkbox"/> WBE Ethnic/Gender Code: <input type="checkbox"/> NON-CERTIFIED
Vendor ID Code	
Contact Person	Phone Number:
Additional Contact Info	Fax Number: E-mail:
Amount of Subcontract	\$
List commodity codes & description of services	
Justification for not utilizing a certified MBE/WBE	

SMBR Contact Information			
SMBR Contact Name	Contact Date	Means of Contact	Reason for Contact
		<input type="checkbox"/> Phone OR <input type="checkbox"/> Email	

FOR SMALL AND MINORITY BUSINESS RESOURCES DEPARTMENT USE ONLY:

Having reviewed this plan, I acknowledge that the Offeror ☐ HAS or ☐ HAS NOT complied with these instructions and City Code Chapters 2-9A/B/C/D, as amended.

Reviewing Counselor

Date

I have reviewed the completing the Subcontracting/Sub-Consultant Utilization Plan and ☐ Concur ☐ Do Not Concur with the Reviewing Counselor's recommendation.

Director/Assistant Director or Designee

Date

Appendix A (1 of 2)

#	Issue Name	Par Amount	Series	Issue Date
Public Improvement Bonds				
1.	Public Improvement Refunding Bonds	\$172,505,000	Series 2008	3/12/2008
2.	Public Improvement Bonds, BABs	\$78,460,000	Series 2009	9/16/2009
3.	Public Improvement Refunding Bonds	\$91,560,000	Series 2010	11/17/2010
4.	Public Improvement Refunding Bonds	\$68,285,000	Series 2011A	11/2/2011
5.	Public Improvement Refunding Bonds	\$43,250,000	Series 2013A	10/8/2013
Combined GO Bonds				
	Public Improvement Refunding Bonds	\$31,585,000		
6.	Certificates of Obligations	\$24,150,000	Series 2006	10/4/2006
	Public Property Finance Contractual Obligations	\$14,120,000		
	Public Improvement Refunding Bonds	\$97,225,000		
7.	Certificates of Obligations	\$3,820,000	Series 2007	10/4/2007
	Public Property Finance Contractual Obligations	\$9,755,000		
	Public Improvement Refunding Bonds	\$76,045,000		
8.	Certificates of Obligations	\$10,700,000	Series 2008	10/7/2007
	Public Property Finance Contractual Obligations	\$26,715,000		
	Public Improvement Bonds	\$20,905,000		
9.	Certificates of Obligations	\$12,500,000	Series 2009	9/16/2009
	Public Property Finance Contractual Obligations	\$13,800,000		
	Public Improvement Bonds	\$79,528,000		
10.	Certificates of Obligations	\$22,300,000	Series 2010	10/5/2010
	Public Property Finance Contractual Obligations	\$16,450,000		
	Public Improvement Bonds	\$78,090,000		
11.	Certificates of Obligations	\$51,150,000	Series 2011	10/4/2011
	Public Property Finance Contractual Obligations	\$26,725,000		
	Public Improvement Bonds	\$74,280,000		
12.	Certificates of Obligations	\$24,645,000	Series 2012	10/4/2012
	Public Property Finance Contractual Obligations	\$27,135,000		
	Public Improvement Bonds	\$104,665,000		
13.	Certificates of Obligations	\$25,355,000	Series 2013	10/8/2013
	Public Property Finance Contractual Obligations	\$50,150,000		
	Public Improvement Bonds	\$89,915,000		
14.	Certificates of Obligations	\$35,490,000	Series 2014	10/4/2014
	Public Property Finance Contractual Obligations	\$14,100,000		
	Public Improvement and Refunding Bonds	\$236,905,000		
15.	Certificates of Obligations	\$43,710,000	Series 2015	10/6/2015
	Public Property Finance Contractual Obligations	\$14,450,000		
	Public Improvement and Refunding Bonds	\$98,365,000		
16.	Certificates of Obligations	\$44,015,000	Series 2016	10/4/2016
	Public Property Finance Contractual Obligations	\$22,555,000		
Airport/Hotel/Convention Center				
17.	ABIA Landhost, Airport Hotel Senior Rev	\$38,785,000	Series 1999 A&B	2/26/1999
	ABIA Landhost, Airport Hotel Sublien Rev	\$3,730,000		
18.	Airport System Refunding Revenue Bonds*	\$306,225,000	Series 2005	8/17/2005
19.	HOT Sublien Variable Rate Rev Refunding Bonds*	\$125,280,000	Series 2008	8/14/2008
20.	HOT Sublien Waller Creek	\$20,185,000	Series 2012	3/22/2012
21.	Airport System Revenue Bonds	\$60,000,000	Series 2013	5/30/2013
22.	Airport System Revenue Refunding Bonds	\$35,620,000	Series 2013A	10/25/2013
23.	HOT Revenue Refunding Bonds	\$26,485,000	Series 2013	12/19/2013
24.	Airport System Revenue Bonds	\$244,495,000	Series 2014	12/9/2014
25.	Town Lake Park Community Events Center Refunding	\$29,080,000	Series 2016	11/16/2016
26.	Airport System Revenue Bonds	\$185,300,000	Series 2017A	2/2/2017
	Airport System Revenue Bonds (AMT)	\$129,665,000	Series 2017B	

* - Variable Rate Issuances

Appendix A (2 of 2)

#	Issue Name	Par Amount	Series	Issue Date
Austin Water				
27.	Water and Wastewater System Revenue Refunding Bonds*	\$170,605,000	Series 2008	5/15/2008
28.	Water and Wastewater System Revenue Refunding Bonds	\$175,000,000	Series 2009	2/4/2009
29.	Water and Wastewater System Revenue Refunding Bonds	\$76,855,000	Series 2009A	12/3/2009
30.	Water and Wastewater System Revenue Refunding Bonds	\$76,855,000	Series 2010A	12/16/2010
31.	Water and Wastewater System Revenue Refunding Bonds	\$100,970,000	Series 2010B	12/16/2010
32.	Water and Wastewater System Revenue Refunding Bonds	\$237,530,000	Series 2011	12/7/2011
33.	Water and Wastewater System Revenue Refunding Bonds	\$336,820,000	Series 2012	7/31/2012
34.	Water and Wastewater System Revenue Refunding Bonds	\$282,460,000	Series 2013A	7/25/2013
35.	Water and Wastewater System Revenue Refunding Bonds	\$282,205,000	Series 2014	6/24/2014
36.	Water and Wastewater System Revenue Refunding Bonds	\$249,145,000	Series 2015A	8/18/2015
Austin Energy				
37.	Austin Energy Revenue Refunding Bonds	\$146,635,000	Series 2007	8/21/2017
38.	Austin Energy Revenue Refunding Bonds	\$119,255,000	Series 2010A	7/8/2010
39.	Austin Energy Revenue Refunding Bonds	\$100,990,000	Series 2010B	
40.	Austin Energy Revenue Refunding Bonds	\$267,770,000	Series 2012A	12/18/2012
41.	Austin Energy Revenue Refunding Bonds	\$327,845,000	Series 2015A	6/2/2015
42.	Austin Energy Revenue Refunding Bonds	\$101,570,000	Series 2017	2/14/2017
Other				
43.	Mueller Local Gov't Corp Contract Revenue	\$12,000,000	Series 2006	8/20/2006
44.	NW Austin MUD #1 Unlimited Tax Refunding Bonds	\$2,760,000	Series 2009	12/15/2009
45.	Special Assessment Revenue Bonds, Senior (Whisper Valley)	\$15,500,000	Series 2011	11/16/2011
46.	Special Assessment Revenue Bonds, Senior (Indian Hills)	\$2,860,000	Series 2011	11/16/2011

* - Variable Rate Issuances

Appendix B
City of Austin
\$31,585,000 Public Improvement Bonds, Series 2006, Expenditures by Month

	Totals	Sidewalks 8071-607	Bikeways 8071-607	Street Impr 8071-607	Colorado 8921-867	Rundberg 8921-867	Fund 8101-857
Issued							
PIB	31,585,000	5,000,000	2,000,000	8,000,000	5,500,000	4,170,000	6,915,000

FY2006-07 Expenditures by Month

Total	9,536,849	2,515,106	120,832	2,136,963	-	3,397,847	1,366,101
Balance at 9/30/07	22,048,151	2,484,894	1,879,168	5,863,038	5,500,000	772,153	5,548,899

FY2007-08 Expenditures by Month

Total	8,126,856	1,682,699	340,098	3,663,769	-	358,730	2,081,559
Balance at 9/30/08	13,921,295	802,195	1,539,069	2,199,268	5,500,000	413,423	3,467,340

FY2008-09 Expenditures by Month

Total	5,654,570	802,195	938,210	2,199,268	-	-	1,714,897
Balance at 9/30/09	8,266,725	(0)	600,859	0	5,500,000	413,423	1,752,443

FY2009-10 Expenditures by Month

Total	2,036,082	-	600,859	-	469,024	-	966,199
Balance at 9/30/10	6,230,643	(0)	0	0	5,030,976	413,423	786,244

Balance at 9/30/11	3,393,905	(0)	0	0	2,248,002	380,774	765,129
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Balance at 9/30/12	1,287,461	(0)	0	0	346,636	380,774	560,051
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FY2012-13 Expenditures by Month

October	184,816				175	148,319	36,322
November	78,980				54,819	12,935	11,226
December	53,988				5,711	14,045	34,232
January	80,916				18,400	43,806	18,710
February	72,859				26,774	32,863	13,222
March	89,030				25,778	53,536	9,716
April	48,191				0	20,880	27,311
May	26,510				0	-	26,510
June	7,185				0	4,123	3,062
July	45,988				0	25,537	20,451
August	35,887				0	3,222	32,665
September	57,569				(650)	8,809	49,410
Total	781,919	-	-	-	131,007	368,075	282,837
Balance at 9/30/13	505,542	(0)	0	0	215,629	12,699	277,214

GOAL DETERMINATION REQUEST FORM

Buyer Name/Phone	Liz Lock/512-974-2034	PM Name/Phone	Bryan Rivera/ 512-974-7891
Sponsor/User Dept.	Financial Services/ 7400	Sponsor Name/Phone	Bryan Rivera/ 512-974-7891
Solicitation No	EAL0300	Project Name	Arbitrage Compliance Services
Contract Amount	\$55,000/year	Ad Date (if applicable)	07/17/2017
Procurement Type			
<input type="checkbox"/> AD – CSP <input type="checkbox"/> AD – Design Build Op Maint <input type="checkbox"/> IFB – IDIQ <input checked="" type="checkbox"/> Nonprofessional Services <input type="checkbox"/> Critical Business Need <input type="checkbox"/> Sole Source* <input type="checkbox"/> AD – CM@R <input type="checkbox"/> AD – JOC <input type="checkbox"/> PS – Project Specific <input type="checkbox"/> Commodities/Goods <input type="checkbox"/> Interlocal Agreement <input type="checkbox"/> AD – Design Build <input type="checkbox"/> IFB – Construction <input type="checkbox"/> PS – Rotation List <input type="checkbox"/> Cooperative Agreement <input type="checkbox"/> Ratification			
Provide Project Description**			
Arbitrage compliance and related services as required to ensure compliance with Internal Revenue Code section 148 and Treasury regulations.			
Project History: Was a solicitation previously issued; if so were goals established? Were subcontractors/subconsultants utilized? Include prior Solicitation No.			
Previous contract MA 7400 PA080000075. No subcontracting opportunities were identified.			
List the scopes of work (commodity codes) for this project. (Attach commodity breakdown by percentage; eCAPRIS printout acceptable)			
Financial Advisor/94648- 100%			
Liz Lock		06/28/2017	
Buyer Confirmation		Date	

* Sole Source must include Certificate of Exemption

**Project Description not required for Sole Source

FOR SMBR USE ONLY			
Date Received	6/28/2017	Date Assigned to BDC	6/28/2017
In accordance with Chapter 2-9(A-D)-19 of the Austin City Code, SMBR makes the following determination:			
<input type="checkbox"/> Goals	% MBE	% WBE	
<input type="checkbox"/> Subgoals	% African American	% Hispanic	
	% Asian/Native American	% WBE	
<input type="checkbox"/> Exempt from MBE/WBE Procurement Program		<input checked="" type="checkbox"/> No Goals	

GOAL DETERMINATION REQUEST FORM

This determination is based upon the following:

- | | |
|--|---|
| <input type="checkbox"/> Insufficient availability of M/WBEs | <input type="checkbox"/> No availability of M/WBEs |
| <input type="checkbox"/> Insufficient subcontracting opportunities | <input checked="" type="checkbox"/> No subcontracting opportunities |
| <input type="checkbox"/> Sufficient availability of M/WBEs | <input type="checkbox"/> Sufficient subcontracting opportunities |
| <input type="checkbox"/> Sole Source | <input type="checkbox"/> Other |

If Other was selected, provide reasoning:

MBE/WBE/DBE Availability

There are 4 MBE firms that may bid as Primes.

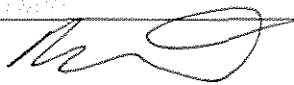
Subcontracting Opportunities Identified

No subcontracting opportunities identified.

Rachelle Delouis

SMBR Staff

Signature/ Date



6/28/17

SMBR Director or Designee



Date 6/29/17

Returned to/ Date: